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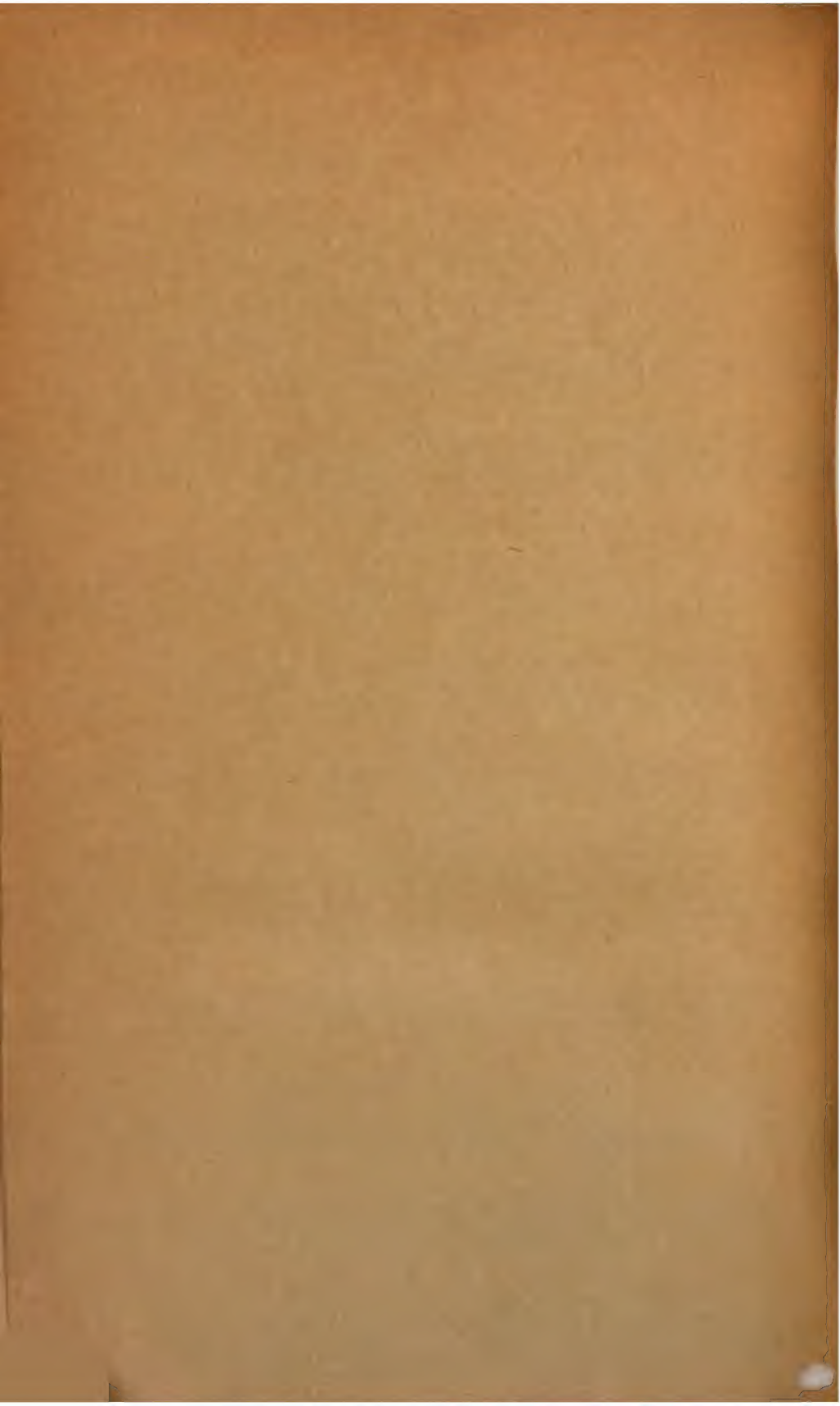
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The

June 30

Law Magazine and Law Review,

(FOURTH SERIES, VOL. XIX., 1893-94.)

*Being the combined Law Magazine, founded in 1828, and
Law Review, founded in 1844.*

Edited,

FROM 1875 to 1883,

BY

T. P. TASWELL-LANGMEAD, B.C.L., OXON.,

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AND

C. H. E. CARMICHAEL, M.A., OXON.,

AND CONTINUED BY

C. H. E. CARMICHAEL, M.A., OXON.,

For. Corr. Memb., Soc. Comp. Legislation, Paris,

AND

W. P. EVERSLEY, B.C.L., M.A., OXON.

LONDON:

STEVENS AND HAYNES,

Law Publishers,

BELL YARD, TEMPLE BAR, W.C.

1894.

P
L 993

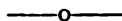
LONDON:

PRINTED BY PEWESS & CO.,

28, LITTLE QUEEN STREET, LINCOLN'S INN FIELDS, W.C.

Rev. Nov. 1893 - Dec. 1894.

Law Magazine and Review.



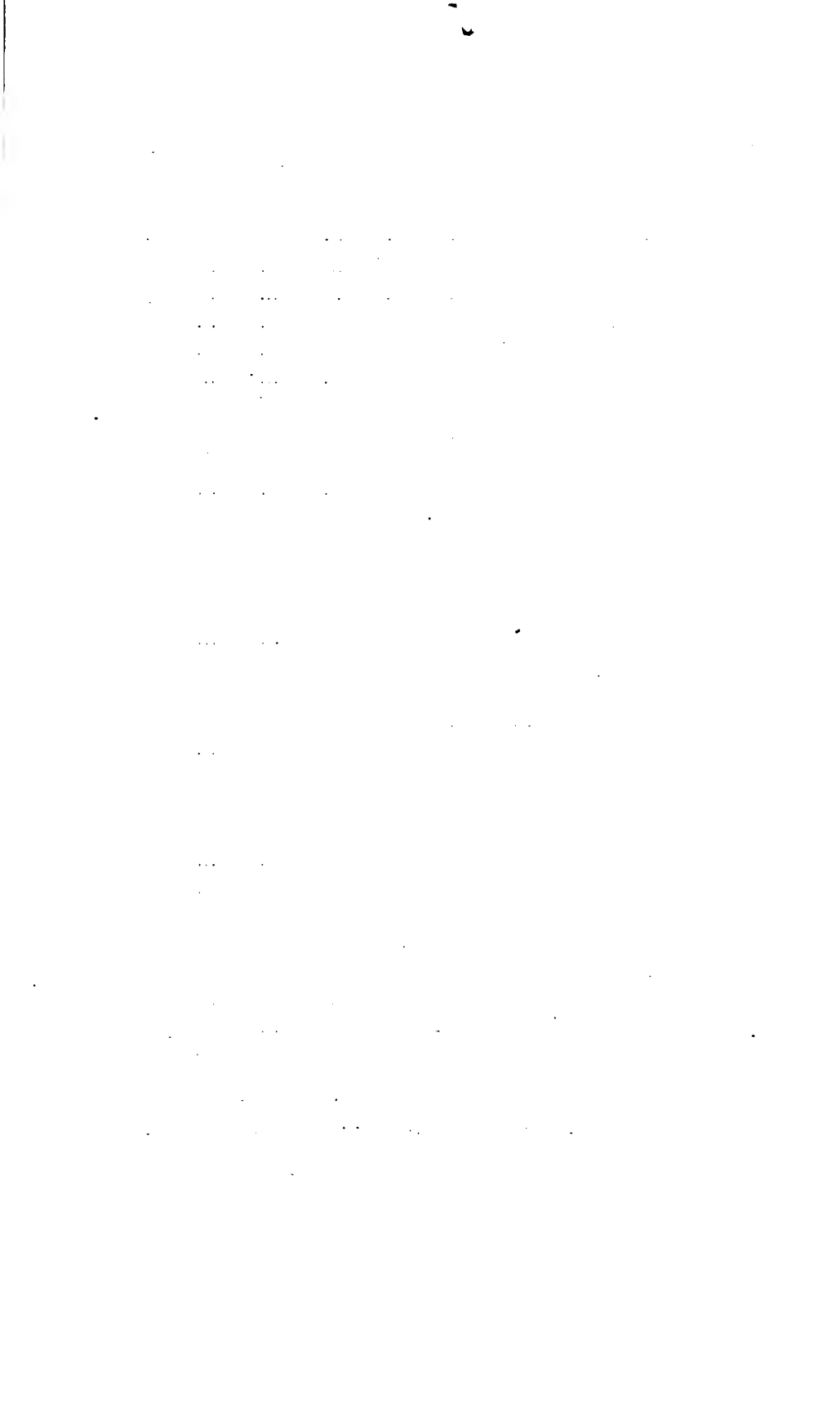
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THE LAW MAGAZINE AND REVIEW.

NO. CCXC.—NOVEMBER, 1893.

I.—OUR INDIAN FEUDATORIES AND THE ADMINISTRATION OF JUSTICE IN INDIA.

I.

WHEN Lord Stanley of Alderley called the attention of the Government, in May last, to the injustice resulting from Executive Officers in India being vested with Judicial powers, and illustrated the subject by a recent case of grievous wrong wantonly inflicted on a distinguished member of Indian society, Lord Kimberley, the Indian Secretary of State, admitted that "it was contrary to right and good principle that the Civil and Judicial powers should be united in one person." But he declared that "the difficulty was that, if the present system were altered, it would be necessary to double the staff throughout the Empire, and that it was impossible at the present time to find the means of making the reform." In other words, that *the finances of the country were not in a condition to bear the additional expense*. This startling announcement that India is too poor to defray the cost of administering justice to her people, is deserving of particular attention.

For the last quarter of a century the Government have constantly represented the Indian Revenues in a favourable and promising light; and their latest *Financial Statement* shews that the year 1891-92 closed with a surplus of Rx. 467,000, while the aggregate surplus of the four years ending with 1891-92 amounted to no less than Rx. 6,804,000. It is true that the Estimates of 1892-93 and 1893-94 shew

deficits; but those untoward results are ascribed in the Statement, not to any falling off in the Revenue (which has on the contrary increased), but chiefly to three causes, namely, *loss by Exchange, increased Sterling expenditure, and increased Army expenditure*. The *loss by Exchange* is likely to be smaller than was anticipated, as the actual rate has so far ruled higher than the rate taken in the Estimates.

As regards *Sterling expenditure*, the heading comprises interest on Government loans, guaranteed dividends on railways, pensions and furlough allowances, and the Indian Secretary of State's salary and establishment; it also includes payments to the War Office, and the purchase of Army, Railway and other Stores. Of these six items of disbursement the first three are, from their nature, susceptible of no material reduction; but the fourth, viz., the Secretary of State's salary and establishment should, on the equitable principle adopted with regard to the Colonial Office, form no charge on the Revenues of India. This item, which is free from all Constitutional check at present, would, if dealt with on the principle referred to, come within the wholesome sphere of Parliamentary investigation. The fifth item, viz., the payments exacted by the War Office, has been repeatedly denounced by competent authorities as unduly heavy; and the cost of the Stores supplied by the India Office is believed, upon rational grounds, to be likewise excessive. A Commission appointed some years ago to report on certain Stores sent out for the port of Calcutta, found that they had cost some forty per cent. more than the sum for which they might have been procured through the ordinary channels of trade.

An equitable adjustment of the fourth and fifth items of *Sterling expenditure* and the adoption of a sound system for the purchase and shipment of Stores would relieve the finances of India to a very considerable extent; but the present difficulties of the Indian Exchequer appear to have

arisen chiefly from *Military expenditure* incurred in unsuccessful wars and expeditions undertaken for the subjugation of neighbouring tribes and principalities.

However flattering it might be to our national pride to see new territories added to our Empire, we cannot divert to such an object the resources of India, which are primarily and legitimately applicable to the wants of her people, without alienating our Indian subjects and endangering thereby the safety of our actual possessions.

Under all the above circumstances, the Secretary of State's answer to Lord Stanley, while it betrays a low estimate of the responsibilities of his Office, fails completely to justify the Government in refusing, upon financial grounds, to remove the blot which stains the administration of justice in India.

Moreover, the desired reform—namely, the Separation of Executive and Judicial powers—does not necessarily involve a question of finance. Supposing the number of officers, who now perform both functions promiscuously, were divided into two sections—the one charged with the assessment and collection of Revenue and general Executive duties, while the other adjudicated the criminal and litigious matters now dealt with by Revenue Collectors and their assistants—there seems no reason why double the number of officers should be needed, so long as the amount of work and the number of persons to do it, remained the same. On the other hand, it is not unreasonable to expect that division of labour would promote proficiency in each section, whereby the work in both departments would be done with greater expedition and skill; while the deplorable ignorance and partiality now so frequently displayed by Executive Officers when called to perform Judicial duties, would cease to disfigure our Indian Administration.

Furthermore, a scheme for effecting the desired reform without entailing additional expense on the State, was

submitted to the Government in July last by Sir William Wedderburn, Bart., whose successful career in the Indian Civil Service entitled him to a hearing on the subject. The scheme had been elaborated by an Indian District Collector and Magistrate of acknowledged merit, and approved by the Right Honourable Sir Richard Garth, late Chief Justice of Bengal; it was, nevertheless, refused at once, a proceeding which has naturally caused much surprise, seeing that it emanated from an able and trustworthy source, and aimed at terminating a state of things which the Government itself had just condemned in unequivocal terms.

The motive of the refusal, however, might be surmised from the fact that the fiscal demands in India, which have constantly increased since the Government of the country was transferred to a Cabinet Minister, became so oppressive that they could be recovered only by illegal processes. The question then arose whether the demands should be reduced to moderate dimensions, or the Collectors of Revenue placed above the Law. The Secretary of State unfortunately elected the latter alternative, and not only sanctioned Legislative measures removing Revenue matters and the conduct of Revenue Officers from the cognizance of the Law Courts, but vested Revenue Collectors with Judicial powers, which enable them to sit in judgment over their own acts, when these are called into question.

It will thus be seen that the reform now asked for, while it is imperatively needed in the cause of justice, cannot fail to involve serious financial consequences—a consideration which will doubtless account for the determined resistance offered to it by the Secretary of State. At the same time, it must be evident to all that, until Executive Officers in India are divested of their Judicial powers, and themselves made amenable to duly constituted Law Courts

controlled by the Chartered High Courts, the people will not have the means of appealing for protection and redress to Tribunals inspiring them with such confidence as that which they now repose in the decisions of the High Courts.

II.

The reform suggested in the foregoing pages would relieve our Indian fellow subjects of an amount of wrong and suffering which, judging from the frequency of the complaints recorded in recent years, may soon become intolerable. But even when that reform is conceded, an important section of the Indian people will still be left without a Court of Justice to protect their rights and their property—namely, the Princes and Chieftains generally known as our Allies and Feudatories.

Forgetful of the warnings given by the sanguinary rebellion of 1857, the Government, availing themselves of the *quasi* irresponsible powers acquired under the 21 and 22 Vict., c. 106, soon resumed the unscrupulous course of action which had brought that terrible retribution upon us. For a time territorial annexations were discontinued; but other methods were found for appropriating the wealth of our Allies and diverting the resources of their States from their legitimate channel—that of promoting the welfare and prosperity of their own subjects. Allegations of misrule in Native States, and the duty of protecting their subjects from oppression, furnished the British Government with pleas for interfering in their internal administration and acquiring control over their finances. In no instance had the people sought our protection, and while our interference constituted a flagrant violation of Treaties, the allegations themselves rested on the most flimsy ground, and often upon no ground whatever. When a public inquiry was demanded into the accuracy of those allegations, the request was generally ignored,

and threats, criminal accusations, and other modes of intimidation were resorted to for obtaining compliance with our requirements.

Solemn Treaties and written engagements exist between the Native States and the British Government ; but when those Treaties are infringed by us, the stronger party, the other, or weaker party, has absolutely no means of redress : he is, moreover, warned by us against appealing to the Viceroy or Secretary of State, except through the British Agent posted at his Court ; that is, through the very agency employed in perpetrating the wrong complained of. Can it be any matter for wonder that, considering their helpless condition, the wealth of Indian Princes and the resources of their States should have become objects of enterprise to so powerful and irresponsible a bureaucracy as the administrative system by which India is governed ?

The recent case of the Maharaja of Kashmir furnishes a striking illustration of the tortuous policy which is pursued by the British Government towards our Indian Allies and Feudatories.

When the Punjab was occupied by the British, Gulab Sing, the grandfather of the present Maharaja of Kashmir, was, by a Treaty signed in 1846, confirmed in the possession of his territories on his paying £750,000 to us and his undertaking certain engagements which have all been faithfully executed. Indeed, Gulab Sing proved a most valuable ally during our great trouble in 1857 ; he sent a contingent of troops with artillery to co-operate with the British forces before Delhi ; and, when offered an increase of territory in recognition of his assistance, he refused to accept it, saying that he had helped the British Government out of his loyalty and goodwill, and not with the object of receiving any remuneration. Gulab Sing died the same year, and our relations of amity with the Kashmir State continued uninterrupted during the reign of his eldest son

and successor, Runbir Sing, who died on the 12th September, 1885. It was in the latter year also that the revival of our "Forward-frontier" policy (which contemplated the conquest of territories bordering upon Afghanistan) occasioned a great and sudden increase in our military expenditure; and the Government resolved (as it became evident from their subsequent action) on appropriating the finance and general resources of Kashmir towards the cost of the expeditions they were to send beyond the northern boundary of that State.

Accordingly the Viceroy, as soon as he heard of Runbir Sing's death, wrote, on the 14th September, to Pertab Sing, his son and successor, that "the administration of the State had become seriously disorganised during the illness of his father; that many reforms were necessary; and that the Viceroy's Agent would remain with and help him," adding the following unjustifiable sentences:—

"I request your Highness to refer to him for a more detailed explanation of my views regarding the future administration of the Kashmir State, and I hope that you will be guided by his advice in carrying those views into execution."

Now, what were those views? They actually compassed the usurpation of the sovereign power and the appointment of a Council of State to rule the country in obedience to the orders of the Government of India, as conveyed through their Agent. But on what ground did the Government presume thus to take into their own hands the internal government of an Allied State? Can a necessity for administrative reforms (and where does such necessity not exist?) justify the violation of Treaties? The Indian Government pleaded that their motive was to relieve the people from oppression; but was the action taken by them such as to warrant that plea? Their

action consisted chiefly in the construction of military roads for marching troops to the northern frontier, in the collection of grain, forage and transport cattle, and in the levy and equipment of Kashmirian troops to serve as auxiliaries to our own soldiers. Were these operations, which absorbed the resources of the State, calculated to relieve the people from oppression? A system of forced labour prevails in Kashmir, as it prevails throughout British India; and the construction of our military roads, far from being a source of remuneration, has been one of injustice and suffering to the people whom we professedly came to relieve. Impressment by the British still continues in Kashmir, as may be seen from the *Pioneer* of the 5th September last, saying, "The unfortunate coolies who are pressed into the service for carrying the telegraph line to Gilgit, are constantly running away."

The new Maharaja replied to the Viceroy's letter on the 18th of the same month, saying that it pained him extremely to learn the intended change in the status of the British officer to be posted at Kashmir; that exactly when he had resolved on proving himself equal to the onerous and responsible duties of a good ruler, a change was made which would "lower him in the eyes of his subjects and in the estimation of the public." He went on to say:—

"I have sufficient confidence in the unbiassed justice of your Excellency's Government to hope that you will not form any unfavourable opinion of my abilities, intentions, and character, till the result of my administration for a sufficient length of time should justify a definite conclusion; that you will see no necessity for altering the status of the officer on special duty in Kashmir, and that there shall be no occasion for me to ask your Excellency to take into consideration the *Sanads* of Her Imperial Majesty's Government, securing to the Chiefship the full enjoyment of all the rights

of my father and my grandfather. I attach the greatest importance to the credit of earning the reputation of a just and benevolent ruler without interference from any quarter, and of preserving intact in all its relations the integrity of the State inherited from my father. It is fully known to your Excellency that I have only just now acquired the power of shewing to the world that, without interference from outside or the smallest diminution of the long existing rights and dignity of this State, I am able and willing, of my own accord, to introduce and maintain such reforms as are calculated to entitle a ruler to the lasting gratitude of his subjects."

It seems impossible after reading that letter to believe that, if our motive in interfering had been to improve the condition of the people, we should have declined to encourage the young Maharaja in his laudable ambition. On the other hand, our opposition is accounted for by the obvious fact that, however beneficial his contemplated reforms might have been for his subjects, they were not calculated to promote our military projects. Accordingly, we hampered him at once by imposing on him a scheming and aggressive Agent, and afterwards deprived him of all control over the administration of his State. Immediately after the death of Runbir Sing, a search was made for his treasure, and our Agent wrote on the 28th September, 1885: "As mentioned in my former letter, Maharaja Runbir Sing is said to have left considerable private wealth."

Meanwhile, in order to impress the world with the belief that our action had been called for by the Maharaja's incapacity for government, his character was maligned in semi-official organs in India, and the slander was repeated at home, while the Maharaja's letter of 18th September was kept from the public eye.

The immediate connection between the British interference in Kashmir and the projected British expeditions

from Gilgit, is shewn by the following passage in the Secretary of State's despatch of 27th November, 1885 :—

“ Having regard to the character of the new ruler and to the aspect of affairs beyond the frontier in respect of which Kashmir occupies so important a position, I entertain no doubt as to the necessity of the measures now reported.”

But, that the prosecution of our military scheme was the sole motive of our usurpation, was subsequently placed beyond the pale of doubt by the copy of a Memorandum of the Foreign Secretary to the Government of India, countersigned by Lord Dufferin on the 10th May, 1888, which appeared in the columns of an Indian paper in 1889. Lord Lansdowne, who challenged the accuracy of a part of the published copy, fully acknowledged, nevertheless, the correctness of the following portion thereof :—

“ I do not agree with Mr. Plowden, the Resident in Kashmir, in this matter. He is too much inclined to set Kashmir aside and to assume that, if we want a thing done, we must do it ourselves. The more I think of this scheme, the more clear it seems to me that we should limit our over-interference, as far as possible, to the organisation of a responsible military force at Gilgit. If we annex Gilgit, or put an end to the suzerainty of Kashmir over the petty principalities of the neighbourhood, and above all, if we put British troops into Kashmir just now, we shall run a risk of turning the Durbar against us, and thereby increase the difficulty of the position.”

The motive of our interference is thus shewn to be the prosecution of our “ Forward ” policy, and not the relief of the people of Kashmir.

The Maharaja's letter of 18th September, 1885, in which he appealed to the *Sanads*, viz., the Treaties and the Queen's Proclamation, must have proved most embarrassing to us, and appears accordingly to have been left unanswered. In order, however, to intimidate and silence the Maharaja, we

informed him, through our Agent, that letters in his handwriting had been intercepted, which disclosed treasonable correspondence with Russia and a design of procuring the death of the British Resident by poison. The Maharaja at once declared the letters to be daring forgeries; but his declaration was unheeded; and individuals about his person hinted at the possibility of his being deported to Rangoon, or tried for mutiny and hanged. He was kept under strict surveillance and permitted to see no one without leave from the British Agent, until harassed by insulting proceedings and constant persecution, he expressed his willingness to give a trial to the system of a State Council, as required by us, by himself appointing a Council, leaving the reins of the Government in its hands for five years, and afterwards resuming his ruling powers and adopting such form of administration as might then appear to him best suited for his country. He was asked to put the project in writing, and upon his refusing to sign it before he had some guarantee of its being accepted, he was subjected to great pressure by the British Agent, as stated by him in a letter to the Viceroy, and compelled to give his signature. No sooner, however, was this paper obtained, than it was held up to the world in the light of an edict proclaiming a voluntary resignation of all power in his kingdom. Semi-official papers in India and in England announced that the Maharaja of Kashmir had been engaged in treasonable correspondence with Russia; that ample proofs of the treachery were in the hands of the British Government; that the Maharaja, conscious of his guilt, had placed the resignation of his rule in our hands, and that the resignation had been accepted. So far, however, was the Government from possessing any such proofs or receiving such resignation, that they were, at the same time, instructing their Agent at Kashmir "carefully to avoid basing the Maharaja's deposition

exclusively either upon the letters or upon the resignation, but to base the decision of the Government upon a full consideration of all the circumstances." (See *Government Instructions*, 1st April, 1889.)

The Maharaja, eluding the spies by whom he was surrounded, wrote on the 14th May, 1889, an autograph letter to Lord Lansdowne, which he sent by a trusty messenger to Simla, and in which the following passages occur :—

"After much suffering and distress I have decided on addressing your Excellency through a special messenger. My country, my treasury, my army, my very life and blood I place at the disposal of the Government of our Sovereign-Mother the Queen-Empress. I know that I have been extremely misrepresented to the British Government. My enemies have succeeded in driving me into my present mean position, and I implore your Excellency to save me from it, taking my defenceless situation into consideration. The recent allegations against me about secret correspondence with Russia, the attempt to poison the British Resident and other stupid stories did not affect my mind in the least, for I was under the impression that a special officer would be deputed to inquire into those charges, when I should have an opportunity of shewing that they were false."

The Maharaja, then referring to the paper on the proposed Council for five years, thus explained the undue pressure under which that paper had been obtained :—

"With the information of these [incriminating] letters, Colonel Nisbet dashed into my room, and brought such a great and many-sided pressure in all solemnity and seriousness, that I was obliged to write what was desired or rather demanded by him in order to relieve myself for the moment, having full faith that your Excellency's Government will not accept such a one-sided view of the

matter, and that full opportunity will be given to me of defending myself.

“I am informed that, under orders from your Excellency’s Government, I am expected to refrain from all interference in the administration, but that I am to retain my rank and dignity as Chief of the State. What rank and dignity can I retain under such circumstances? My condition is worse than that of a deposed ruler, inasmuch as he is removed and does not witness the insulting scenes to which I am exposed. If your Excellency wants to make me responsible for the administration of my State, I would ask to be placed in the position of a responsible ruler. In spite of what has been represented about my incapacity, I would ask your Excellency to give me a fair trial. From three to five years time will, I think, be quite sufficient for me to put everything into order, provided a British Resident throws no obstacle in my way. If this liberty is not to be allowed to me, I would humbly ask your Excellency to summon me before you, shoot me through the heart and thus relieve an unfortunate prince from unbearable misery and disgrace.”

A reply to this urgent and all important letter was delayed until the 28th June, whereby time was gained for communicating on the subject with the Secretary of State, and the perusal of that reply may well fill us with shame and indignation at the subterfuges and artifice used in it in colouring and disguising the unfair line of conduct adopted towards a loyal and faithful ally. Touching the incriminating letters, all inquiry is withheld, and the Maharaja is insultingly told that “many of them have every appearance of being genuine.” Then as regards the paper on a Council for five years, not only is the Maharaja’s complaint of the means by which it was obtained disregarded, but the document is, by ingenious arguments, unfairly twisted into a permanent resignation of sovereign power. The

Viceroy's letter concludes with the following insincere sentence:—

“In the interests of the people of Kashmir and of the ruling family itself, it has been impossible to leave the control of affairs in your Highness's hands.”

III.

The affair attracted the attention of several Members of Parliament, and on the 14th March, 1889, the Under-Secretary for India, replying to the Member for East St. Pancras said:—

“The Government of India attach very little importance to the intercepted letters. No official papers have yet arrived in this country, and it is impossible therefore to say whether the Secretary of State will lay any on the table.”

An equally mystifying answer was given to another Member a month later, and on the 20th of June, the Member for Northampton asked, among other questions:—

“Whether the State of Kashmir had been virtually annexed, and its ruler subjected to great indignities:—Whether a letter from the British Resident at Kashmir had been addressed to the Prime Minister on the 17th April, 1889, stating that he had been ordered by the Viceroy to inform the Maharaja that his Highness will be expected to refrain from all interference in the administration of the State:—Whether such a letter is a violation of the promises made by the Queen on the assumption by Her Majesty of the direct rule of India, that the Indian Princes should be safeguarded in their dominions and that no annexation of native territory should be made:—Whether the Maharaja had been informed that he will have no power of obtaining the State Revenues, and is not to attend the meetings of the Council, and that the Council is expected to exercise its powers under the guidance of the British Resident:—Whether the Secretary of State is aware that, in an auto-

graph letter to the Viceroy, the Maharaja has protested against the treatment to which he has been subjected, begging that if liberty cannot be restored to him, his life might be taken :—Whether the Secretary of State will state why the course described has been taken with the Maharaja, without any opportunity being given to him of being heard either by the Government of India or any other authority :—Whether an opportunity will be given to the Maharaja to apply for a reversal of the decree contained in the letter of the 17th April, 1889 :—Whether all papers connected with Kashmir will be laid on the table with as little delay as possible.”

The Under-Secretary for India, in his reply, stated :—

“The Government has neither annexed the State of Kashmir nor subjected its ruler to great indignities. The Secretary of State has as yet received no information respecting the letter referred to. The Maharaja has voluntarily resigned the administration of his State, and his resignation has been accepted. There is no correspondence upon the subject which could be at present laid before Parliament without detriment to the public service.”

On the 18th February, 1890, the Government were again moved for papers relating to Kashmir, and replied that they would be laid on the table. Four months later, viz., on the 20th June, and again on the 26th, the motion was renewed, when the following answers were given :—

“The papers are now before the Secretary of State and will be immediately presented to the House.”

“I have to-day laid the papers on the table; their distribution depends on the printing authorities.”

Ultimately, on the 5th July the Member for Northampton moved the adjournment of the House for discussing a definite matter of urgent public importance, viz., the taking away by the Government of India from the Maharaja of Kashmir the Government of his State and part of his

Revenues, whilst refusing to allow any Judicial or Parliamentary inquiry into the grounds for such action against a great Feudatory Prince.

In the course of a comprehensive speech the Member for Northampton stated:—

“The Maharaja has applied for a trial in India; that has been denied. The Secretary of State has been asked to sanction an inquiry and has refused. The leader of the House has been asked to appoint a Select Committee of inquiry and has also refused; so that neither Judicial, nor Parliamentary, nor Governmental inquiry is being allowed, although the gentleman has been subjected to penalties which, in the case of the meanest person in this country, would entitle him to have the accusation brought before some Tribunal, and witnesses against him heard. I should have pressed this claim for inquiry twelve months ago, but there were then no papers before the House. This Prince is entitled to that which any other subject of Her Majesty, if he be a subject of Her Majesty, is entitled to, viz., a fair trial before condemnation. If considerations of State can justify the Government of India [*i.e.*, the Secretary of State for India] in depriving one man of his authority and property unheard, there is no protection for any one throughout the whole of our Asiatic dominions. If the Maharaja has been criminal, let him be condemned and punished, but do not rob him under cover of a criminality which you dare not bring in evidence against him, and as to which you will allow no inquiry in India or here. Lord Cross said at Sheffield last year:—‘We did interfere in the matter of Kashmir, and why? Because the people of Kashmir were so ground down by the tyranny and misgovernment of the Maharaja, that we were bound to interfere for the protection of the inhabitants.’ Where, in these papers, is there one instance of this grinding down? I am not asking the House to say that this unfortunate man

is guiltless. I am asking them to say that he is entitled to be tried and to have an inquiry before he is deprived of his rights. In 1889 the Government deprived this gentleman of his Chieftainship. By what right?—By no right save the right of force. By what law?—By no law save the law of force. This man appeals to this House, not that you should declare that the Government of India is wrong—he simply asks for an inquiry, and he has a right to that inquiry. If you trample on Treaties, if your obligations to the Princes of India are to be broken, if the Native rulers are not to rely on your word, and English justice in India is a shadow and a delusion, let that be known; but let those who hold a contrary opinion vote for my motion as the means of protest.”

The Under-Secretary for India, in his reply, said :—

“I will tell the House why it appears to the Secretary of State that this is not a subject which can properly be made matter for inquiry.”

But nowhere, in the long speech which followed, is the promised explanation to be found. The charges regarding which an inquiry was asked are repeated with colouring observations, but without the slightest evidence in their support, and the speaker went on to say :—

“I am shewing what was the state of things which compelled the Government to take this action. I am going to shew the House why the Government, in the interests of humanity, were peremptorily called to take this step. (A laugh.) The Hon. Member may laugh, but I think it is not a laughing matter.”

Then, after describing the miseries inseparable from forced labour and the hardships endured by cultivators, the Under-Secretary said :—

“This, Mr. Speaker, is the description of the condition of the unhappy people of Kashmir, which seems to have moved the laughter of the Hon. Member opposite.”

On this the Member for County Donegal said :—

“I see too much suffering to regard it otherwise than with infinite sorrow and sympathy. I smiled that a gentleman, representing a Government guilty of such conduct, should claim universal benevolence and pretend to be benefitting the people while they are robbing an ancient prince of his inheritance. With regard to the letters on which so much stress has been laid, not one of them has been read to the House.”

Four Members spoke afterwards, one of whom made the following observations :—

“The course of the debate has taken us from the point we ought to have before us. The complaint is that the Government have not given this man a chance of clearing himself of the charges that have been brought against him. The Right Hon. Member asks if we are going to stand in the way of justice being done in Kashmir ; but is he going to stand in the way of justice being done to the Maharaja ? If he asserts that the Maharaja is innocent of the charges brought against him——”

Under-Secretary : “There are no charges.”

Member : “Then why is he deposed ?”

The debate then came to an end, and, on a division, the motion for an inquiry was lost.

IV.

The result of the division on the 5th July, 1890, cannot fairly be ascribed to any conviction on the part of the majority, that the deposition of our ally was not a proper subject for inquiry. Both the great political parties were implicated in the denounced transaction, and were strongly interested, therefore, in preventing the proposed investigation.

The affair has not only cast a deep shadow on the character of our Indian administration ; it has created a

danger which it would be unwise, in the light of history, to disregard and despise. Kaye observes, in his *History of the Sepoy War*, that in 1856 "we were lapping and lulling ourselves in a false security. We had warnings, and brushed them away with a movement of impatience and contempt. When Henry Lawrence wrote: 'How unmindful we have been that that which occurred in the City of Cabul, may some day occur at Delhi, Meerut, or Bareilly,' no one heeded the prophetic saying any more than if he had prophesied the immediate coming of the day of judgment."

Then, referring to the Cawnpore massacre, which filled the world with horror, the historian says:—

"Dundoo Punt, the Nana Sahib, felt that he hated the English and that his time had come; but all that was passing in the mind of the disappointed Malhattratta was a sealed book to the English. Of course the whole story of the disappointment was on record. Had it not gone from Calcutta to London, and from London back to Calcutta, and again to Cawnpore? To Civilians a rejected memorial was so common a thing that, even to the best informed of them, there could have appeared no earthly reason why Dundoo Punt should not accept his position quietly, submissively, resignedly, after the fashion of his kind, and be ever after loyal to the Government that had rejected his claims. So, when danger threatened them, it appeared to the authorities of Cawnpore that assistance might be obtained from the Nana Sahib. He had been in friendly intercourse with our officers up to this very time, and no one doubted that as he had the power, so also he had the will to be of substantial use to us in the hour of our trouble. It was one of those strange revenges with which the stream of time is laden. 'The arbiter of others' fate,' had suddenly become 'a suppliant for his own;' and the representatives of the British Government were suing to one recently a suitor cast in our own political courts."

Greater similarity will be found between the case of the Maharaja of Kashmir and that of the King of Oude, whose deposition accelerated events in 1857. It was urged by the *Absorbing School* (under which name Colonel Sleeman denounced the supporters of our systematic spoliation) that "a grievous wrong would be done to humanity to have any longer abstained from interference. But what was the interference to be? Lord Dalhousie, though he proposed not to annex Oude, determined to take the Revenues; while the Court of Directors, the Board of Control, and the British Cabinet sanctioned annexation."* Thus in both cases humanity was the plea and spoliation the motive of interference. Let us also remember that "it was not until the crown had been set upon the work by the seizure of Oude, that the Nana Sahib and his accomplices saw much prospect of success. Men asked each other who was safe and what use was there in fidelity, when so faithful a friend and ally as the King of Oude was stripped of his dominions by the Government whom he had aided in its need."†

Pertab Sing's personal character seems different from that of Dundoo Punt : he may feel as keenly a wrong done to him ; but revenge does not appear to be a ruling passion with him. Among the many victims, however, of our despoiling course, may there not be some who are brooding over their wrongs and biding their time ?

J. DACOSTA.

* Kaye's *Hist.*, pp. 143 to 146.

† *Ib.*, p. 579.

II.—THE BEHRING SEA AWARD AND REGULATIONS.

I FEEL some justifiable pride in having urged Arbitration for the settlement of this important dispute, and in finding that the opinions which I expressed, in this Review, some four years ago, are precisely the same as those entertained by the majority of the Arbitrators as to the law and the facts submitted to them. The Arbitrators have vindicated the Law of Nations by their decision, and have promoted the interests of peace by the regulations to be established, in future, in regard to the Behring Sea Fisheries. They have rejected the arguments of the United States in regard to moral and humanitarian rules, which were urged before them as to the alleged exclusive rights of property, by the United States, in the fur-seals on the North Pacific, or elsewhere on the High Seas. In deciding on the rights before them, they have taken their stand on the well-known rules of International Law as to the High Seas. Whether the Regulations laid down by them will have the effect of destroying, or injuring, our North Pacific Fur-Seal Fisheries, or not, I do not venture to give any opinion. They are made equally applicable to the citizens of Great Britain and of the United States. If they are unsuitable, they can, by the mutual consent of the parties, be modified, or abolished. At present, they are imperfectly binding on the subjects of the High Contracting Parties. To be enforceable against all the world, they must be adopted by all nations. Perhaps the restricted zone of 60 miles around the Pribyloff Islands may not be sanctioned by the other great Powers. Nay more, perhaps the British Parliament may refuse to recognise this suggested extension of Fishery rights in

favour of the United States. If the United States do not regulate the slaughter of fur-seals within their territorial jurisdiction, they cannot expect Great Britain to submit to the limitations suggested by the zone of 60 miles. The Arbitration Tribunal has no powers to make new rules of International Law. Therefore, further negotiations between the two High Contracting Parties on this subject are inevitable. The question of Damages, payable by the United States to Great Britain, can now easily be settled, by the High Contracting Parties, on the basis of the findings of the Arbitrators. The Award itself will be a glorious monument of peace in the archives of the Great Anglo-Saxon race. Its substance will, no doubt, be submitted to the other great Powers of the world for their approval and adoption. The Behring Sea Award is a great victory of peace, justice and International Law.

(*Award.*)

After the preamble stating the case submitted for decision, the full text of the English version of the Award is as follows :—

“Now we, the said Arbitrators, having impartially and carefully examined the said questions, do, in like manner, by this our Award, decide and determine the said questions in the manner following, that is to say, we decide and determine as to the five points mentioned in Article VI., as to which our Award, is to embrace a distinct decision upon each of them.

“As to the first of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, the Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine as follows :—

“By the Ukase of 1821, Russia claimed jurisdiction in the Sea now known as the Behring Sea to the extent of

100 Italian miles from the coasts and inlands belonging to her, but, in the course of the negotiations which led to the Treaties of 1824 with the United States, and of 1825 with Great Britain, Russia admitted that her jurisdiction, in the said Sea, should be restricted to the reach of cannon-shot from the shore; and it appears that, from that time, up to the time of the cession of Alaska to the United States, Russia never asserted in fact, or exercised, any exclusive jurisdiction in Behring Sea, or any exclusive rights in the seal fisheries therein, beyond the ordinary limit of territorial waters.

“As to the second of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, the Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that Great Britain did not recognise or concede any claim upon the part of Russia to exclusive jurisdiction as to the seal fisheries in Behring Sea outside of the ordinary territorial waters.

“As to the third of the said five points, as to so much thereof as required us to decide whether the body of water now known as Behring Sea is included in the phrase ‘Pacific Ocean’ as used in the Treaty of 1825 between Great Britain and Russia, we, the said Arbitrators, do unanimously decide and determine that that body of water known as the Behring Sea was included in the phrase ‘Pacific Ocean’ as used in the said Treaty; and as to so much of the said third point as requires us to decide what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after the said Treaty of 1825, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, the Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that no exclusive rights of jurisdiction in Behring Sea, and no exclusive rights as to

the seal fisheries therein, were held or exercised by Russia outside of ordinary territorial waters after the Treaty of 1825.

“As to the fourth of the said five points, we, the said Arbitrators, do unanimously decide and determine that all the rights of Russia as to jurisdiction, and as to seal fisheries in the Behring Sea east of the water boundary in the Treaty between the United States and Russia of March 30th, 1867, did pass unimpaired to the United States under the said Treaty.

“As to the fifth of the said five points, we, the said Baron de Courcel, Lord Hannen, Sir John Thompson, the Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, decide and determine that the United States have not any right, or protection, or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit.

(Regulations.)

“And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States, mentioned in Article VI., leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of fur-seals in, or habitually resorting to, Behring Sea: the Tribunal having decided, by a majority, as to each article of the following regulations, we, the said Baron de Courcel, Lord Hannen, Marquis Visconti Venosta, and Mr. Gregers Gram, assenting to the whole of the nine articles of the following regulations, and being a majority of the said Arbitrators, do decide and determine in the mode provided by the Treaty that the following concurrent regulations outside the jurisdictional limits of the respective

Governments are necessary, and that they should extend over the waters hereinafter mentioned, that is to say:—

ARTICLE I.

“The Governments of the United States and Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue at any time, and in any manner whatever, the animals commonly called fur-seals, within a zone of sixty miles around the Pribyloff Islands, inclusive of the territorial water.

“The miles mentioned in the preceding paragraph are geographical miles of sixty to a degree of latitude.

ARTICLE II.

“The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue in any manner whatever, during the season extending each year from the 1st of May to the 31st of July, both inclusive, fur-seals on the High Sea in that part of the Pacific Ocean, inclusive of Behring Sea, which is situated to the north of the 35th degree of north latitude, and eastward of the 180th degree of longitude from Greenwich, till it strikes the water boundary described in Article I. of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

ARTICLE III.

“During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing-vessels shall be permitted to carry on or take part in fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

ARTICLE IV.

“Each sailing-boat authorised to fish for fur-seals must be provided with a special license issued for that purpose by

its Government, and shall be registered to carry a distinguishing flag to be prescribed by its Government.

ARTICLE V.

“Masters of vessels engaged in fur-seal fishing shall enter accurately in their official log-book the date and place of each fur-seal fishing operation, and also the number and sex of the seals captured on each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

ARTICLE VI.

“The use of nets, firearms, and explosives shall be forbidden in fur-seal fishing. This condition shall not apply to shot guns when such fishing takes place outside Behring Sea during the season when it may lawfully be carried on.

ARTICLE VII.

“The two Governments shall take measures to control the fitness of men authorised to engage in fur-seal fishery. These men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

ARTICLE VIII.

“The regulations contained in the preceeding articles shall not apply to Indians dwelling on the coasts of the territory of the United States, or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connection with other vessels, and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each, in the way hitherto practised by Indians, provided that such men are not in the employ of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt for seals outside of territorial waters, under contract for the delivery of skins to any person.

"This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Aleutian Passes.

"Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur-sealing vessels as heretofore.

ARTICLE IX.

"The concurrent regulations hereby determined, with a view to the protection and preservation of seals, shall remain in force until they have been in part abolished or modified by common agreement between the Governments of the United States and Great Britain.

"The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof."

(Special findings of fact as to British Claims for Damages.)

"And whereas the Government of Her Britannic Majesty did submit to the Tribunal of Arbitration by Article VIII. of the said Treaty certain questions of fact involved in the claims referred to in the said Article VIII., and did also submit to us, the said Tribunal, a statement of the facts as follows—that is to say : Finding of facts proposed by the agent of Great Britain and agreed to as proved by the agent of the United States and submitted to the Tribunal of Arbitration for its consideration.

"(I.) That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews respectively mentioned in the schedule to the British case, pages 1 to 60 inclusive, were made by the authority of the United States Government. The questions as to the value of the said vessels and their contents, or either of them,

and the question as to whether the vessels mentioned in the schedule to the British case or any of them were wholly or in part the property of citizens of the United States have been withdrawn from, and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States Government to pay the amounts mentioned in the schedule to the British case ;

“(2.) That the seizures aforesaid, with the exception of that of the *Pathfinder*, seized at Neah Bay, were made in Behring Sea at distances from the shore mentioned in the schedule marked ‘C’ ;

“(3.) That the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when they were made, instructions from the Executive Department of the Government of the United States, a copy of one of which is annexed hereto, marked ‘A,’ and that the others were in all substantial respects the same ; that in all instances in which proceedings were had in the District Courts of the United States resulting in condemnation such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto marked ‘B,’ and that the libels with other proceedings were in all substantial respects the same ; that the alleged acts or offences for which the said several searches and seizures were made were, in each case, done or committed in the Behring Sea at the distance from the shore aforesaid, and that, in each case, in which sentence of condemnation was passed, except in those cases where vessels were released after condemnation, the seizure was adopted by the Government of the United States, and in those cases in which vessels were released the seizures were made by the authority of the United States ; that the said fines and imprisonments

were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in the Behring Sea at distance from the shore aforesaid.

"(4.) That the several orders mentioned in the schedule annexed hereto, warning vessels to leave or not to enter the Behring Sea, were made by public armed vessels of the United States, the commanders of which had at the several times when they were given like instructions as mentioned in the finding of No. 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States ;

"(5.) That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the schedule to the case of Great Britain, pages 1 to 60 inclusive, had all the jurisdiction and powers of Courts of Admiralty, including prize jurisdiction, but that, in each case, sentence pronounced by the Court was based upon the grounds set forth in the libel." (Here follow the schedules, &c.)

"And whereas the Government of Her Britannic Majesty did ask the said Arbitrators to find the said facts as set forth in the said statement, and whereas the agent and counsel for the United States Government thereupon, in our presence, informed us that the said statement of facts was sustained by evidence, and that they had agreed with the agent and counsel for Her Britannic Majesty that we, the Arbitrators, if we should think fit so to do, might find the said statement of facts to be true,

"Now we, the said Arbitrators, do unanimously find the facts as set forth in these statements to be true :

"And whereas each and every question which has been considered by the Tribunal has been determined by a majority of all the Arbitrators,

"Now we, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti Venosta, and Mr. Gregers Gram, the respective minorities not withdrawing their votes, do declare this to be the final decision and Award of this Tribunal, in accordance with the Treaty.

"Made in duplicate at Paris and signed by us the 15th day of August, 1893."

The foregoing Award has appended thereto three declarations for the consideration of the two Governments of Great Britain and the United States, namely, (1), as to the regulations being made applicable to the sovereign rights of each of the two interested Powers; (2), that the two Powers should take steps to prohibit fur-seal fishing for two or three years, or at least for one year; and (3), that the regulations should be assured by stipulations by the two Powers, and that the Arbitrators left them to make them.

(President's concluding Remarks.)

In bringing the Arbitration to a conclusion, M. de Courcel defined the work of the Arbitration Tribunal as follows:—
 "We have sought to maintain intact the fundamental principle of this august right of peoples—which extends, like the vault of the sky, above all nations, and borrows the laws of Nature itself to protect one people of the earth against another, and to inculcate on them the prescriptions of a mutual goodwill.

"In the Regulations that we were entrusted to elaborate, we had to decide between divergent rights and interests which it was difficult to reconcile. The Governments of the United States of America and of Great Britain promised, with good grace, to accept and carry out our decision. Our desire is that this voluntary engagement should leave no regrets on either of them, although we have asked from

both what they will perhaps regard as serious sacrifices. This part of our work consecrates a great innovation.

"Hitherto the nations have agreed to leave outside of all special legislation the vast domain of the seas. . . . Yet the sea, after the land, has become small for men who, like the hero Alexander, and not less ardent in work than he was in glory, display their energies in a world too narrow. Our work is a first attempt to share the products, hitherto undefined, of the ocean; by a ruling applied to goods which have escaped every other law except that of the first-comer. If this attempt succeeds, it will undoubtedly be followed by numerous imitations until the entire planet, on the waters as on the continents, shall have become the object of a jealous division. Then, perhaps, the conception of property will change among men."

(Conclusion.)

Such is the Award in this great International dispute, and such are the terms in which the distinguished President brought the work of the Tribunal to an end. In conclusion, I have to express the hope that all International disputes between Great Britain and the United States of America may always be amicably settled, without resort to the arbitrament of war, and that the great nations of the earth, when they see how the Anglo-Saxon races can peacefully settle a very dangerous dispute, will follow their example; and that the time will come when International quarrels will be as generally and satisfactorily ended as the private disputes of the citizens of the freest and most enlightened nations of the world. For my own part, I see no reason to doubt that war will yet become as antiquated as the right of private war in the middle ages. Although we may be far distant from the time when men will "beat their swords into ploughshares and their spears into

pruning-hooks," and although the continent of Europe is, at the present moment, an armed camp, the glorious example now given to the world by Great Britain and the United States of America, in this our latest Arbitration, will not be given in vain.

ALEXANDER ROBERTSON.

III.—THE BRAZILIAN DIFFICULTIES AND THE LAW OF NATIONS.*

IT is hard to know what to call the present state of affairs in Brazil, whether from the strictly Juridical point of view, or from that of everyday life and ordinary speech. If I were to head my Paper the "Brazilian Revolution," I might be told that there is no Revolution in the country. If I were to use the expression "Brazilian Insurrection," I might be told that there are no Insurgents. If I spoke of the "Brazilian Civil War," I might be told that there was no such thing in existence.

On the whole, therefore, I think that perhaps the expression "Difficulties," although it has not a very Juridical sound, may meet some of the objections which might, *stricto jure*, be brought against any of the other forms of expression indicative of my subject. For there are, at any rate, acknowledged difficulties in existence. The (as far as I am aware) duly constituted President of the United States of Brazil, Marshal Peixoto, finds himself in such difficulties in the way of carrying on the Government entrusted to him that he is blockaded in the Federal capital, and the several States of the Union do not appear to be

* A Paper presented to the Sixteenth Conference, London, 1893, of the Association for the Reform and Codification of the Law of Nations, by C. H. E. Carmichael, M.A., F.S.S., International Secretary.

troubling themselves to help him out of that particular difficulty.

It is, therefore, one of our difficulties in considering the present state of Brazil that the nominal Federal Government can scarcely be said to exist save perhaps sporadically, in certain garrisons, or other detachments of the Federal Army, outside the Capital, and that the Capital itself is blockaded, and occasionally bombarded, by what ought to be part of the Federal Navy.

This is a very considerable difficulty all round. Brazilians are blockading and bombarding other Brazilians. Is not that Civil War? It seems to me at least to look very much like it, to an outsider.

It is impossible that such a state of things should last for any time without raising questions of an International character, and of grave International importance.

With regard to the existing nominal Chief of the Executive, President Peixoto, it is obvious, however conflicting the accounts which reach us may be,—and I make all due allowance for this very great and real difficulty which meets us, viz., as to where Truth is mainly to be found,—that he is practically not the ruler of anything outside the walls of Rio de Janeiro. There may be certain portions of the Federal Army still fighting more or less in his interests, but the States of the Union, as such, do not appear to rally round him.

This seems to lend countenance to the allegation made by the former Admiral of the Federal Navy who is now the active leader of the principal part of the Maritime Forces of the country against the nominal President. Admiral Mello's contention—as far as it is publicly known—is that President Peixoto has at various points violated the Constitution, and is therefore no longer *de jure* President, while, of course, for Admiral Mello, and those who act with him, whether Deputies of the Federal Cortes, or officers and

men of the late Federal Navy, he is also no longer the *de facto* President.

But Admiral Mello does not give himself out, as far as I am aware, as an anti-President. He is, ostensibly, at least, using the Naval forces of his country, which he wishes, as he alleges, to save from despotism, in order to disestablish Marshal Peixoto, and from his own point of view, at any rate, to restore true freedom to the Brazilian Republic.* Anyhow, the action of Admiral Mello raises a question of great importance to all Maritime Powers:—What is the character, in International Law, of the Naval forces under Admiral Mello's Flag?† Originally, of course, Admiral Mello was a commissioned officer of the United States of Brazil and the ships under his command were Public Ships of War of that State. But now that the Admiral is leading his forces against the Chief of the Executive of the Brazilian Republic, as at present known to the Law of Nations, what is the position, on the one hand, of those of his ships which were formerly commissioned by that Republic, and on the other, of those which the Admiral himself appears to have put in commission on his own account? The position of the latter class is seemingly more irregular than that of the former.‡ The adherents of Marshal Peixoto

* This is certainly Admiral Mello's ostensible ground. Whether there is any truth in the suggestion that he secretly desires to restore the Empire, does not concern me here.

† I use the expression Flag, of course, as synonymous with command in Naval language. What may be the National Flag hoisted by Admiral Mello I have not at present any means of knowing, though I am inclined to think, from his language, as made known to us in the Press, that he probably continues to sail under the National Flag of the United States of Brazil (whose servant he still apparently professes to be), under which he was originally commissioned.

‡ I am inclined to believe from the circumstance that Deputies of the Federal Cortes have unquestionably sided with Admiral Mello, and publicly protested on board his own ships that he and they were acting in the true interests of Brazil, that all the ships under the Admiral's orders continue, as

would no doubt at once say, unhesitatingly, as to both classes of vessels, that the Admiral and his forces were nothing but Pirates: at least I believe that to be, logically, and probably actually, the position likely to be taken up by the Marshal. This is, substantially, exactly the position which the United States Executive at first tried to take up with regard to the armed forces, both naval and military, of the Southern States, during the early days of the Civil War which arose out of the Secession of the Southern States from the Union. But it is to be noted that this position, which the Executive would fain have taken up, was disallowed by the written opinion of Judge Daly, addressed to Hon. Ira Harris, 21st December, 1861,* which pronounced Privateersmen, members of those forces, to be prisoners of war and not Pirates.† I think, therefore, that the safer course in the present very serious difficulty as to the character of the forces under the command of Admiral Mello, would be to follow the precedent set in the Northern portion of the American Hemisphere, and admit these ships to be the Public

I have already suggested, to sail under the Flag of the Brazilian Republic, and profess to be ships of war of that Republic, and, if so, there would be no practical distinction to be drawn between the two classes of armed vessels now acting against the Peixoto Government.

* For the reasoning by which Judge Daly arrived at this humane conclusion, reference may be made to his own words, as given in Sir Sherston Baker's new Edition of Halleck's *International Law*, London, 1893, Vol. I., p. 79, note 2. On the point that Belligerency does not imply Sovereignty, which seems a possible objection, Judge Daly has a passage aptly meeting it, by saying that there is a well-defined distinction between the two, recognised by the U.S. Supreme Court in *Rose v. Himely*, 4 Cranch, 241.

† With regard to Pirates, Sir Robert Phillimore is cited by the then Solicitor to the Department of State, U.S.A., in a letter, 33 *Albany Law Journal*, 125, February 13th, 1886 (*apud* Wharton, *op. cit.*, III., § 381) as shewing that Dr. Lushington's ruling in the case of the *Magellan Pirates* (10 Jurist, 1165) was based, not on the position that the persons in question were insurgents, who had not been recognised as Belligerents, but on the proof that their depredations were directed against others than their titular sovereign.

Ships of War of a Belligerent force.* In saying this, of course, we are not, any more than was Judge Daly, saying that the Secession, whether of certain States, or of certain ships and men, is either legally or morally justifiable; that is a different question, a difficulty of another kind, which we are not here called upon to discuss. In adopting the line of action for which I am contending, we should be simply acknowledging the fact of the existence of a state of Belligerency, that is, of war, and we should be simply placing that war on a Legal footing, and preventing it from having a purely lupine character. The Blockade of Rio must certainly be taken by us to be, or to have been, a fact. Our own ships of war, and the ships of war of other countries have been witnesses to the fact, and have been, according to the statements which have appeared in our Press, engaged in warning merchant vessels of their respective nationalities as to its existence, and the consequent danger of attempting to enter Rio. But a Blockade implies a Blockading force, and Admiral Mello's has clearly been no mere Paper Blockade, but a reality, to which our own ships of war have borne testimony. It appears to me, therefore, to be in the interests of Humanity that we should, when the question may become a crucial one, look upon Admiral Mello's force as Belligerents, and, indeed, the mere fact of warning approaching merchant vessels of the existence of a Blockade seems to me to be in

* In the *Morning Post* of October 10th, 1893, I read that, according to the Montevideo correspondent of the *New York Herald*, the commanders of the Foreign ships of war stationed off Rio appear to have informed President Peixoto that, in certain circumstances, viz., if he continued to plant batteries along the shore (obviously with a view of firing upon the ships of Admiral Mello), the Admiral's forces would be recognised as "legal Belligerents." What precisely may be an *illegal* Belligerent, I do not profess to say. I presume, however, that the meaning of the sentence is that the Foreign naval officers would notify the Brazilian President that they should from that date recognise Admiral Mello as a Belligerent according to the Law of Nations.

itself an act amounting to a practical recognition of Belligerency.* And this appears to me to be the common-sense view and the humane view of the character of the ships which have been and probably still are blockading Rio. For us, or for any other Power, to treat them as Pirates would be clearly, I think, to side with Marshal Peixoto. To treat them as Belligerents would be simply to recognise facts, and leave the two parties to fight out their own quarrel, with which we have nothing to do.

There is another point besides that of the character of the ships under Admiral Mello's command, which, although it has not assumed any prominence, is yet worth considering as one of the various incidents of the present Brazilian difficulties. In the early stages of the dissensions which have broken out in Brazil, certain persons who were obnoxious to the Government of Marshal Peixoto took refuge in the Legation of another South American State at Rio. This practically means that those persons availed themselves of the real or supposed right of asylum afforded by the acknowledged inviolability of the residence of an Ambassador or Minister. As far as I am aware, no question has as yet been raised on the subject by the blockaded Marshal. The present moment is scarcely perhaps one at which we could expect him to raise it; but if Marshal Peixoto were to gain the upper hand, and hang Admiral Mello from the yard-arm of his own flag-ship, he would probably

* A recent case in point may, I believe, be cited in behalf of my contention. This country considered the French Blockade of Formosa as equivalent to the declaration of a state of war between France and China, though France professed throughout that there was no such state produced by her action. But war implies Belligerents, and to recognise the existence of a state of war is to recognise the existence of Belligerents. If, therefore, the Blockade of Formosa was rightly held by us to import a state of war, the same should surely be said of the Blockade of Rio. The facts being the same, a state of war between two parties to a conflict (whatever may be their proper designation) is equally imported by each case, I should submit

not be long in seeking to exact reparation of some sort from the State whose Legation at Rio gave a temporary shelter to some of his political opponents. The question which I wish to put is: Would such reparation be justly due? In other words, Does such Right of Asylum exist, and ought it to be generally enforced? To this question various answers may be and often are given, but I am disposed to think that those which are based on a negative theory rest upon inaccurate views of cases cited in this context, and perhaps also upon a possibly unconscious tendency to minimise the position of the Diplomatic Representative of a Foreign State.

The Right of Asylum in the official residence of an Ambassador or Minister appears to me to flow from his character as representing a Foreign Sovereignty, and this also underlies the so-called fiction of Exterritoriality.* There may be subtle distinctions drawn between Ambassadors, as directly representing the person of the Sovereign or other Chief of the Executive of the country accrediting, and Envoys, as representing their principal, says Halleck,† “only in respect to the particular business committed to their charge”; but these distinctions, I should submit, refer only to what may be called Court Punctilio; both classes of Diplomatic Representatives either represent their country, or they represent nothing.‡

* I use the expression “so-called fiction” because the doctrine of Exterritoriality appears to me to belong rather to the domain of Analogy than to that of Fiction. The so-called Right of Asylum, again, may also be considered as being simply another aspect of the Right of Inviolability, as to the existence of which there seems to be, and ought to be, no dispute.

† Baker’s Halleck’s *International Law*, 1893, I., 327.

‡ Distinctions as to the representation of the person of the accrediting Sovereign, or his affairs only, seem to me practically out of date at a time when the maxim that “the King reigns but does not govern” is so generally true throughout Europe. I find that Lorimer, *Inst. of Law of Nations*, Ed. and Lond., 1883, Vol. I., p. 247, treats these distinctions much as I have done, as “rather distinctions of etiquette than distinctions which seriously affect the conduct of affairs.”

Therefore, the person who may take refuge in the house of an Ambassador or Minister is not within the jurisdiction of the State which might wish to get him into its own hands. The so-called fiction of Exterritoriality is only another way of putting the fact that the Ambassador or Envoy is the State which he represents in a concrete form. I conclude, therefore, that war with the State in which, through its Embassy or Legation, the person sought for may have taken refuge, is the only way to get him surrendered, if the State so sheltering him understands, as I understand it, what appears to me to be involved in the inviolability of the house of its representative. The Ripperda Case is, as I have had occasion before now to remark,* often unfairly (as I think) cited against Great Britain, as though it had, in that case, acquiesced in the principle that no such Right of Asylum existed. But, as a matter of fact, Great Britain protested,† and threatened force, and, therefore, can in no natural sense be said to have acquiesced. We may some day find complaints brought against Chili by Brazil, if Marshal Peixoto's Government should survive its present difficulties, but the Right would, I submit, be on the side of Chili. For apart from any technical point as to an ordinary Right of Ambassadorial Asylum, the action of the Diplomatic Representative of Chili would seem to have been based

* *Law Magazine and Review*, No. CCLXXXII., for November, 1891, in a historical note which I felt it right to append on the facts of the Ripperda Case, as cited in the *Current Notes on International Law* by my friend Dr. Gover, in that number.

"The British Government," says Phillimore, *Comm. on International Law*, Vol. II. (third edition), p. 243, "complained bitterly of this act, and demanded reparation for an alleged insult to the Ambassador." This attitude on the part of Great Britain is not shewn in Halleck's very brief mention of the case (*International Law*, 1893, I., 354), which only gives the opinion of the Council of Castile in favour of seizing Ripperda, an opinion which, I think it may fairly be taken, was not likely to be given in any other sense than that which the King was known to desire.

on grounds of Humanity, at least as much as those of Diplomacy, to save life endangered during a period of internal Civil dissension in the country to which he was accredited. It is unfortunate that most writers would seem to be inclined to treat the Ambassadorial Asylum as though the person who sought it would necessarily be a criminal.* I submit that a person obnoxious to the dominant party in a country, or in its capital, is not, therefore, a criminal, and he is, as we have seen, a very likely person to seek such shelter. Moreover, it seems difficult to deny to the Representative of a State the power to receive whom he will within the walls of his hotel without also denying the same power to the State which he represents, and this would be equivalent to dictating to a State what persons it should allow, and what persons it should forbid, to touch its soil. This would probably appear an extreme pretension if put bluntly in so many words. But, logically, such a pretension seems to me to be involved in the denial of the so-called Right of Asylum, which really means, as I understand it, the right of the Ambassador or Envoy (which I consider to be involved in his acknowledged inviolability and exterritoriality) to receive whom he will within his gates. Once there, I should submit, the Ambassador's guest is, so to speak, in sanctuary.

* It should be borne in mind, I think, that the older writers on the Law of Nations had before their eyes an unwarranted extension of the inviolability of the Ambassador's house, which, under the name of *Franchise de l'Hôtel*, had come to be extended to entire districts of certain capitals—in particular, Rome, Venice, and Madrid—and out of which the several Ambassadors, by letting houses in such districts, protected by the Arms of their States, realised, as Lorimer tells us (*Inst. of Law of Nations*, 1883, I., 250), "enormous profits." With such an abuse, of course, I have here nothing to do, and it is, moreover, absolutely extinct, and therefore only calls for notice here in order that I may define my own ground and prevent possible criticism on erroneous assumptions.

On both the points which I am principally concerned with in the present Paper, I may mention that I find matter of interest in a valuable work which is perhaps scarcely so accessible to English and other European students of the Law of Nations as might be desired ; I mean the *Digest of the International Law of the United States*, by Francis Wharton, LL.D., 3 vols., Washington (D.C.), 1886.

In this work, which is all the more instructive as to American views of International Law, that it is stated to be "Taken from documents issued by Presidents and Secretaries of State, and from Decisions of Federal Courts and opinions of Attorneys-General" (of the United States) I find, under the head of Belligerency, some passages which seem worth citing, both in themselves, for their bearing on the Brazilian case under discussion, and on account of the relative rarity of the work from which I cite.

Thus in Vol. III., in § 359, I find an extract from the Judgment in the *Prize Cases*, 2 Black, 635, directly *ad rem* to the position of Admiral Mello.

"To create the right of blockade, and other Belligerent rights, as of capture, against neutrals, it is not necessary that the party claiming them should be at war with a separate and independent Power ; the parties to a Civil War are in the same predicament as two nations who engage in a contest and have recourse to arms. A state of actual war may exist without any formal declaration of it by either party ; and this is true both of a Civil and a foreign war."

This passage appears to afford a strong presumption that United States Courts would recognise Admiral Mello as a Belligerent, and that view is still further strengthened by some passages from an Article by Mr. Bolles, who was the Solicitor of the Navy Department, U.S.A., at the time when the proposed trial of Captain Semmes, of the *Alabama*, for piracy, was referred to him in virtue of his office.

In the Article from which Dr. Wharton extracts (*op. cit.*, III., § 381), Mr. Bolles writes: "By establishing a blockade of Confederate ports, our Government had recognised the Confederates as Belligerents, if not as a Belligerent State, and had thus confessed that Confederate officers and men, military or naval, could not be treated as pirates or guerrillas, so long as they obeyed the laws of war; the same recognition was made when cartels for exchange of prisoners were established between the Federal and Confederate authorities; and, above all, when the Federal Executive, after the Courts had declared Confederate privateersmen to be pirates, had deliberately set aside those judgments, and admitted the captured and condemned officers and men of the *Savannah* and the *Jeff Davis* to exchange as prisoners of war" (Art. in *Atlantic Monthly*, July—August, 1872). The last portion of this extract is of additional interest as shewing that Judge Daly, whose written opinion I had in an earlier portion of this Paper cited from Halleck's *International Law*, and the then Solicitor of the Navy Department at Washington, substantially took the same line as to the character of Confederate privateersmen. It is, of course, true that the Blockade of Rio has been established by that one of the parties to an internal dissension, for which I see no other fitting name than Civil War, which is not the theoretically lawful Government. But the Blockade exists, or has existed down to a very recent date, as a matter of fact, and the ships of war of foreign nations, including our own, have so far recognised its existence as to warn merchant ships of their respective nationalities from incurring the risk of attempting to enter the blockaded port or ports. I should therefore submit that the reasoning of Mr. Bolles on the results, in Law, of the Federal Blockade of the Confederate ports is *in pari materia*, and entitled to be reckoned on the side of my contention on that point in the present Paper.

On another point, viz., whether Admiral Mello could justly be treated as a pirate, there is a passage of interest in one of the Judgments of the Supreme Court, U.S.A., cited by Dr. Wharton (*op. cit.*, III., § 381), which seems worth recording here. In *U.S. v. Baker*, 5 Blatch. 6 (Trial of the officers of the *Savannah*, 371), Judge Nelson charged the jury that "if it were necessary on the part of the Government to bring the crime charged against the prisoners within the definition of robbery and piracy as known to the common Law of Nations, there would be great difficulty in so doing, perhaps, upon the counts—certainly upon the evidence. For that shews, if anything, an intent to depredate upon the vessels and property of one nation only, the United States, which falls far short of the spirit and intent which are said to constitute the essential elements of the crime." Reference is further made, *apud* Wharton, *loc. cit.*, to Woolsey, *Int. Law*, App. 3, Harlan, J. (one of the members of the recent Behring Sea Fisheries Court of Arbitration), in *Ford v. Surget*, 97 U.S., 619; *Dole v. Ins. Co.*, 6 Allen, 373, 2 Cliff., 394; *Fisfield v. Ins. Co.*, 47 Pa. St., 166, and other cases.

To the same effect, Mr. Frelinghuysen, when Secretary of State of the U.S.A., wrote to Mr. Langston, December 15th, 1883 (Ms. Inst., Hayti, For. Rel., 1884, Wharton, *op. cit.*, III., § 381), "The rule is, simply, that a 'pirate' is a natural enemy of all men, to be repressed by any, and wherever found, while a revolted vessel is the enemy only of the Power against which it acts. . . . Treason is not piracy, and the attitude of foreign Governments towards the offender may be negative merely, so far as demanded by a proper observance of the principle of neutrality." With regard to the controverted point as to a Right of Asylum in the house of an Ambassador or Envoy there are some passages in Wharton's *Digest*, I., § 104, which I may cite as showing the view taken by the United States, and

which lend strength to my contention that such a Right does exist.

I thus note that Mr. Clayton, Secretary of State, wrote to Mr. McCauley, May 30th, 1849 (*op. cit.*, I., § 104, Ms. Inst., Barb. Powers), and similarly to Mr. Gaines, October 3rd, 1849, and Mr. Marcy to Mr. De Leon, December 23rd, 1853 (*op. cit.*, *loc. cit.*, *ibid.*), to the following effect:—"Though the privileges of Asylum in Mohammedan States, as well as in South America, are more liberally dispensed than in the leading European States, they should be in all cases carefully guarded."

The Government of Chili, whose Legation in Rio I understand to have temporarily sheltered certain persons Politically obnoxious to President Peixoto, is stated by Mr. Webster, Secretary of State, in a letter to Mr. Peyton (Wharton, *op. cit.*, I., § 104, Ms. Inst., Chili), July 2nd, 1851, to have acquiesced "on former occasions in the exercise of the hospitality of asylum in its larger sense." It would, therefore, seem that the Chilian Minister at the Court of Brazil has only acted in the same manner as that which his own State had acquiesced in when practised by the Diplomatic Representatives of other States. There is evidence, further, in the Ms. Inst., Chili, of the United States Government, in the correspondence of Mr. Cass with Mr. Bigler, that the British and American Consuls at Valparaiso had both acted in the same manner in receiving into their respective Consulates, as asylums, "certain political refugees." Information was at the same time furnished to the United States Government that "the practice on the part of Consuls extending asylum to political refugees is almost generally permitted in the Pacific Republics, and in none more frequently than in Chili."

I am not myself arguing in favour of a Consular Right of Asylum, but the fact of its existence in certain countries

is a strong argument by analogy for its existence as a Diplomatic Right, since it is to an analogy of the Consular with the Diplomatic position in some States that such a Consular practice must be considered to owe its origin. Speaking of a condition of things in South America identical with that now subsisting, and which in fact I am dealing with under the head of the "Brazilian Difficulties," Mr. Seward, Secretary of State, wrote to Mr. Hollister (Wharton, *op.cit.*, I., § 104, Ms. Inst., Hayti, Dip. Corr., 1868), May 20th, 1868: "The revolutionary condition seemed to become chronic in many of the South American nations after they had achieved their independence, and the United States, as well as the European nations, recognised and maintained the Right of Asylum in their intercourse with those Republics."

It is sufficient, I think, for my contention that the European nations and the United States of America should be found to have adopted an identical course in the matter whether of the Diplomatic or of the Consular Right of Asylum in South America, and that such course should have been the recognising and maintaining of such Right. In order to have been "recognised and maintained," that Right must surely exist. I therefore submit that I have offered sufficient evidence to shew that such a Right has been stated to exist, and has been "recognised and maintained" both by the United States and by European Governments in the very country where the latest instance of its exercise has occurred.

Based, as I believe it to be, upon the acknowledged Inviolability of the Diplomatic Representative's official residence, it stands, to that extent, at any rate, upon the Law of Nations, and I submit that there may well be cases, and that cases have lately arisen, in which the Sanctuary of the Diplomatic residence has been the means of exercising those rights of Humanity which are among the

highest attributes of the Human Race, the preservation of Liberty and Life. The Templars, as an Order, perished. But to the houses in Scotland, marked with the Cross of the Templars, and known as Temple tenements, there still attaches the tradition of Sanctuary.

C. H. E. CARMICHAEL.

P.S.—While these sheets are passing through the press, news comes to hand which strongly enforces the description by Mr. Secretary Seward of the “revolutionary condition” as having at one time become “chronic” in South America, and which appears to me to strengthen my own argument in favour of the recognition of Admiral Mello as a Belligerent. We are informed by the *Morning Post* of 2nd November, 1893, that both sides are making ready for a yet sharper conflict. Marshal Peixoto is stated, on the authority of the *New York Times*, to have purchased no less than ten United States merchant steamers for conversion into warships, and to have spent upon ships and munition together at least three million dollars, while the actual conversion into warships is expected to cost another half million. On the other side there is equal activity, and in a direction which seems to promise *guerre d'outrance*, for Reuter's Telegram reports that Mr. Lassoe, the inventor of the Lassoe torpedo, is said to have been offered a commission in the forces of the “Insurgents” in order to take charge of their torpedo system, and to be about to embark at once for Brazil. The Montevideo Correspondent of the *New York Herald* reports Montevideo opinion as inclining to the belief that Admiral Mello will be “caught in a trap in the Bay of Rio” if the Marshal's powerful fleet, which he is “gathering from far and near,” should arrive before the “Insurgent leader” gains a decisive victory. With the value to be attached to this forecast of events from a

Montevideo point of view, I am not concerned. What does concern me is that everything points to the actual existence of a state of war, that is, of Belligerency, while the probable intensification of this condition of affairs is, to my mind, a strong additional argument in favour of my contention for the recognition of Admiral Mello as a Belligerent.—C. H. E. C.

IV.—THE BENGAL CADASTRAL SURVEY: OFFICIAL LAWLESSNESS IN BENGAL.

A LETTER TO THE EDITOR.

SIR,—The able and eloquent letter of “Scrutator” in your August number does a public service in exposing the malpractices of the Government of the North-Western Provinces in regard to the recent Cadastral Survey of the Benares Division. It is really a monstrous thing that a British Government should calmly appropriate funds entrusted to its care by the landholders of the Province for an altogether different purpose, pour the money into the insatiable maw of their own officers in the Settlement Department, and then, several years afterwards, whitewash themselves by an Act passed through the Legislature by the brute force of an official majority voting to order. If this had been done by a private person, a very ugly name would have been applied to the transaction, and no *ex post facto* whitewashing would have saved the offender from bearing the punishment due to his crime.

But surely, Sir, it is even more monstrous that this nefarious proceeding, which “Scrutator” has very properly gibbeted, should actually be quoted by no less a personage than the Secretary of State in his despatch of 24th December,

1891, as a precedent justifying the Government of Bengal in charging seven-eighths of the cost of the Behar Cadastral Survey on the landlords and tenants of Behar. Because in Benares, one-half of the cost of the Survey had been defrayed out of a fund provided by the landlords for another purpose—the payment having been made without their assent, or even their knowledge, and having only been legalised by an *ex post facto* enactment—it is argued that in Bengal Sir Charles Elliott may properly impose seven-eighths of the cost of the Behar Survey on the landlords and tenants of Behar! In the case of every other Survey ever made in any part of India, it should be remembered, the whole of the cost has always been borne by Government, and no part imposed solely on the land.

It is more than doubtful whether this extraordinary demand can be legally enforced. The authority under which the Bengal Government proposes to enforce it is sect. 114 of the Bengal Tenancy Act of 1885. But the operation of this clause is expressly limited by its wording to a Survey ordered by the Government of Bengal, with the sanction of the Governor-General in Council, to be undertaken “in a local area.” The meaning of the phrase “a local area,” if explained by the context in other clauses of the Act, is, a small area having certain peculiar requirements justifying the enormous expense of a Cadastral Survey. But however this may be, it is quite certain that the words have no meaning at all, and are mere surplusage, if the clause can be strained to cover the cost of a General Survey extending to the whole of the Province of North Behar.

Moreover, the history of this sect. 114 of the Bengal Tenancy Act is a most peculiar and instructive one; and throws a good deal of light on the methods of those Bengal officials—a mere handful, forming the *entourage* of the Lieutenant-Governor, Sir Charles Elliott, and strongly opposed by all the rest of the Service—who are striving to

upset the Permanent Settlement of 1793 by this Cadastral Survey.

Your readers will be aware that, under the Permanent Settlement, the British Government bound itself under the most solemn obligations—having made this settlement of the land-revenue at a very high rate, a rate that ruined the majority of the landholders of that time—never under any pretext to increase by one rupee the demand of the Government on incomes derived from the land of Bengal. I believe that arrangement of Lord Cornwallis to have been a most wise and beneficent one ; but, however that may be, no one denies, or can deny, that the engagement was entered into in a particularly solemn way, and absolutely binds the Government both in law, and, still more, in honour.

Now, when Mr. Ilbert introduced the Bengal Tenancy Bill into Lord Ripon's Legislative Council in 1883, he and his friends were strongly suspected of entertaining views hostile to the Permanent Settlement ; and it was generally feared that he would put into the Bill some clause or clauses imposing new charges on Bengal incomes derived from land. The strongest pledges, however, were given at that time that Government had no intention of violating the Permanent Settlement ; and, as a matter of fact, when Mr. Ilbert's draft of the Bill appeared, and was published both in English and in the vernacular, there was not one word, not one hint, in it of any intention on the part of the Government, either to make a General or Provincial Survey, or even to charge on the land the cost of such Surveys as might be necessary for the preparation of a Record-of-rights in "a local area"—where (a) a large proportion of the landlords or tenants apply for it, or (b) it is needed for the settlement of existing disputes.

In this original Draft Bill, Chapter XI. dealt with "The settlement of rents by a Revenue Officer" ; and Chapter XII. dealt with "The preparation of a Record-of-rights by a

Revenue Officer." Now it is quite true that the cost of proceedings under Chapter XI. could be imposed on landlords and tenants—sect. 163 of this Chapter being almost identical with sect. 114 of the existing Act ; but note well, no proceedings under Chapter XI. could be taken at all, except in local areas where (a) a large proportion of the landlords or tenants applied for them, or (b) they were needed for the settlement of disputes existing or likely to arise.

On the other hand, under Chapter XII., the Local Government was empowered, with the sanction of the Governor-General in Council, to direct the preparation of a Record-of-rights "in any case"—but always "in a local area"; and without the sanction of the Governor-General in Council, it was similarly empowered, in the same special cases as those mentioned in Chapter XI., and also in the case of Government or Wards' estates. But note well, that the Local Government was *not* empowered to charge the proceedings under Chapter XII. to landlords and tenants.

In Committee, certain compromises were arrived at, and Chapters XI. and XII. were cut down, joined together, and became Chapter X. of the Act as it passed in 1885.

Before the Act passed, the representatives of the landlords and tenants urgently demanded that the Bill, as amended in Committee, should be republished in the vernacular, as few of them knew English and hardly any had been able to follow or comprehend the eternal discussions in Committee. The same request was urged on their behalf in March, 1885, by Sir Herbert Maxwell, M.P., in the House of Commons, and by Lord Wemyss in the House of Lords.

The Government obstinately refused to grant this very reasonable request. And let everyone note the excuse given for this refusal—an excuse that was repeated by

Mr. George Russell in the House of Commons last Session ; it was, that republication in the vernacular was unnecessary, because the alterations had been "for the most part excisions favourable to the zemindars !"

Now, will it be believed that, in the alterations by which Chapters XI. and XII. of the Draft Bill became Chapter X. of the Act, the sect. 163 (that empowered the Local Government to charge costs on landlords and tenants in the two cases (a) where a large proportion of the landlords and tenants demanded a settlement, or (b) where it was required to settle disputes existing or likely to arise) was retained as sect. 114 ; but in such connection that it is now claimed that it empowers the Local Government to charge these costs *in any case*, provided only the sanction of the Governor-General has been obtained !

This, remember, is one of the alterations that were merely "excisions favourable to the zemindars," and that consequently did not need to be, and actually were not, republished in the only language understood by those concerned !

This is the simple history of the clause of the Act under which the Government now claims these monstrous powers of taxation. And the facts can be verified by anyone who will take the trouble to compare the original Draft Bill with the Act as passed.

Possibly by a fortunate accident, in the *hocus-focus* by which Chapters XI. and XII. of the Draft Bill became Chapter X. of the Act, the words "in a local area" were retained—a fact that is quite sufficient to shew that there was no open and avowed intention of conferring such exorbitant powers on the Local Government. It seems not unlikely that this fact, whether accidental or intentional, will be held by the High Court and the Judicial Committee of the Privy Council to invalidate the claim of the Government, and to prevent them from recovering these costs from the landlords and tenants ; in which

case, the burden of these wasted millions will be thrown on the general taxation of the country, to still further disorder the finances of India, and to shew how much mischief a single obstinate and fanatical individual can accomplish, when he happens to belong to the Official caste, and to hold the position of a Lieutenant-Governor.

Another equally instructive point remains to be noticed. This ruinously costly Survey, which is to harass and impoverish the whole of the landed interest in Behar, is represented by Sir Charles Elliott as the obvious and necessary outcome of the Bengal Tenancy Act; and in this contention he is supported by his official apologists in the House of Lords and the House of Commons. But unfortunately for them, it happens that Mr. Ilbert, as the author of that Act, published in 1883, in accordance with the usual custom, a "Statement of Objects and Reasons" for the Bill. That "Statement" is on record, and can be consulted by everyone. Will it be believed, that it does not contain one word that, by any pretence whatever, can be alleged to point even remotely to any intention of the Government to make any such Survey? Still less did it contemplate the imposition of such crushing burdens on the unfortunate landlords and tenants as Sir Charles Elliott now proposes to impose. Nor, as a matter of fact, did it suggest the imposition of any burdens of any kind, except such as might be asked for and undertaken by the landlords and tenants themselves in their own interests.

Yours obediently,

INDOPHILUS.

* * * [Note.—It may be convenient to those of our readers who have not ready access to the Indian Act referred to in the letter of our valued correspondent, if we append the

relative passages of the Sections of the Bengal Tenancy Act of 1885, from the *Bengal Code*, Calcutta, 1889. Vol. I., p. 508.

"1885. VIII. Tenancy."

Ch. X. Sect. 114. "Where an order is made under this chapter in any case except under sect. 101, sub-sect. (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him."

Sect. 101, sub-sect. (2), clause (d) enacts that "The cases in which an order may be made under this Section without the previous sanction of the Governor-General in Council are the following, namely, (a) (b) (c)

(d) Where a settlement of revenue is being made in respect of the local area."—ED.]

V.—FOREIGN MARITIME LAWS: IV. SCANDINAVIA.

CHAPTER V.—(*Continued.*)

Contract of Affreightment.

145. In accordance with Art. 144, the Commander is responsible to the consignee for the accuracy of statements in the Bill of Lading respecting the goods. If they have been received in closed cases or packages, so that the contents are unknown to the Commander, or if the Bill of Lading states the measure, weight, or number of pieces of goods, and the Commander has not on receiving them verified the measures, weights, or numbers of pieces, he may endorse the Bill of Lading to that effect, and free himself from responsibility, unless he saw, or might by the exercise of reasonable care have seen, that the measures, weights, or numbers of pieces were inaccurate when he received them.

B. 13, F. 222, 229, G. 607, 608, 654-660, H. 512, 513, I. 498, 555, 558, R. 348.

146. If it is impossible when taking in goods to ascertain their condition or the sufficiency of the packages, the Commander can free himself from liability, as in Art. 142, by inserting in the Bill of Lading such words as "Free from leakage, breakage, or damage." Such a reservation does not, however, free him from responsibility if the damage or diminution can be shewn to have been caused by such matters as under Art. 142 render the ship liable.

G. 659, R. 348.

147. If goods are loaded which clearly shew damage or insufficient packages, the Commander must insert a clause in the Bill of Lading stating the fact. If he fails to do so, he renders himself liable to the consignee, even

if the reservation above mentioned (Art. 146) has been inserted.

G. 660.

148. If, on the ship's arrival at her port of destination, there is reason to believe that the cargo has sustained damage, or that any of it has been lost, the consignee can call a survey. And if damage is found, the surveyors must state from what cause, in their opinion, it originated.

If a consignee has accepted delivery of the cargo without a previous survey, and then desires to complain of its condition, he must demand a survey as soon as possible, and before the termination of the working day next following that on which he received the goods. If he does not do this, he cannot obtain compensation unless he proves that the damage or short delivery was caused by the default or neglect of the officer of the ship, or of some other person for whose acts the owner is liable by reason of Art. 8.

The Swedish version refers to a survey called by the Commander (Art. 42), and advises that both Commander and consignee should be present at the survey.

G. 609-611, H. 493, 494. E. 128, 129.

149. Where, in accordance with Art. 142, the owner has to give compensation for damage or short delivery, or, in accordance with Art. 49, has to pay for goods sold for the benefit of the ship, the amount of compensation must be settled in conformity with the rules laid down in Arts. 200 and 201.

B. 93.

150. If goods are loaded without any previous agreement as to the amount of freight, its amount is governed by the rates current at the port of shipment. If the freight has been agreed, but more goods are shipped than originally contemplated, the extra freight is calculated *pro rata* on the extra goods shipped.

B. 75, F. 288, G. 620, H. 469, S. 674. E. 108.

151. No freight is due for goods which cannot be found at the end of the voyage, unless such goods have been destroyed by their own inherent qualities (Art. 172) or in consequence of defective packages or other fault or neglect of the shipper, or unless the goods have been sold in the course of the voyage on the owner's account. If freight has been paid in advance, for goods for which, in accordance with the foregoing, no freight is due, its repayment may be demanded if nothing to the contrary has been stipulated.

B. 93, 97, F. 298, G. 618, 619, H. 480-482, S. 660, 661, 663. E. 120, 121.

152. A consignee may abandon spirits and other liquids from the freight when more than half has leaked out. He must, however, avail himself of this right, which applies to each separate vessel or cask, before he has taken delivery, and cannot do so if the goods have been shipped in insufficient packages and the Commander has endorsed the Bill of Lading with a notice to that effect in accordance with Art. 147.

See Art. 160, *post*.

B. 77, F. 310, G. 617, H. 497, I. 581, P. 562, S. 687. E. 131.

153. The ship pays all expenses and charges in connection with the voyage from the time the cargo is laden until it is delivered at its port of destination. Hence Custom House dues on ship, expenses of quarantine, tugs, and such like charges do not concern the cargo.

G. 622.

154. By taking delivery of the goods, the consignee binds himself to pay the freight for them as well as any other claims the Commander may have in respect of them upon him, in conformity with the conditions of the Bill of Lading or any other document in virtue of which he has received the goods.

B. 71, 76, 79, F. 285, G. 615, I. 560, R. 389, S. 686.

155. The Commander is not bound to deliver the goods until the consignee pays or places on deposit the amount

he has to pay under the provisions of Art. 154 as well as demurrage, compensation for delay in discharging and any average contribution there may be and all other charges for which the cargo, in accordance with Art. 276, may be liable. On delivery of the goods the Commander may take possession of moneys thus placed on deposit; the subsequent right of the consignee, in case of dispute, to arrest being reserved. If the amount of general average contributions has not been ascertained, the Commander may not retain the goods if the consignee gives security for his contribution. The above regulations apply so in the case of any goods the discharge of which is required at the loading port or elsewhere in the course of the voyage.

B. 79, F. 306, G. 616, 624, 625, H. 488, I. 580, P. 561, R. 360, S. 665, 666. E. 125.

156. If the consignee refuses to take delivery, or if he is not known or cannot be found, the Commander must, if practicable, at once communicate the fact to the shipper. If the proper consignee does not appear at such a time as to allow the Commander to effect the discharge within the demurrage days, or, in case of a general cargo, if the goods are not taken delivery of within the time prescribed by the Commander (see Art. 138), the Commander can warehouse the goods. If the consignee fails to perform the obligations laid down in Art. 155, or if he delays the discharge so much that it cannot be completed within the prescribed time, then also the Commander is entitled to land and warehouse the goods. When goods are thus warehoused the Commander is bound to inform the consignee; if he is unknown or cannot be found, notice is given as prescribed in similar cases by Art. 118.

The Commander has a claim for compensation at a rate not less than that of demurrage for all delay beyond

the days on demurrage occasioned by warehousing the cargo or otherwise, where the ship is not in default.

The Swedish version prescribes that the rate, so far as it exceeds the demurrage rate, is to be settled by arbitration in case of dispute.

B. 78, F. 305, G. 629, H. 489, I. 579, P. 559, 560, S. 668, 711. E. 124.

157. When goods are warehoused in the circumstances provided for in Arts. 140 and 156, the Commander has a right to have a sufficient quantity sold by public auction to meet the claims mentioned in Art. 155 as well as import duties and expenses.

B. 78, F. 305, G. 626, H. 489, I. 579, P. 539, S. 668. E. 124.

158. When the Commander has delivered the goods to the consignee, he has no further claim against the charterer for moneys payable by the consignee. But he retains his right to recover from the charterer any profit which may have accrued to him from the consignee's refusal to pay. When the goods are not delivered, and, on being sold, the proceeds are insufficient to satisfy the claim, the charterer is liable for the balance.

The Swedish version is the same in effect, but substitutes the shipowner for the Commander as the person to sue or recover.

B. 78, F. 305, G. 627, 628, H. 488.

159. Either party may cancel the charter-party without giving or receiving compensation, where, before the vessel leaves the place at which the voyage commences,

- (1.) A war breaks out which renders ship or cargo liable to capture :
- (2.) The ship is placed under embargo :
- (3.) The port of departure or of destination is blockaded, or the export of the goods from the port of loading, or their import into that of destination is prohibited :
- (4.) The voyage itself, or the conveyance of the goods, is stopped by public authority.

If the prohibition applies only to a portion of the charterer's goods, he cannot cancel the contract except by paying

freight in accordance with the rules laid down in Arts. 126 and 129.

If the contract is not cancelled the goods to which the prohibition applies may be discharged at the charterer's expense.

If the charterer, before the days on demurrage expire, announces his intention to load other goods, the Commander must receive them, when they can be carried without greater difficulty than the original goods, and are shipped without delay. The Commander has a right to recover all extra expenses occasioned thereby,* and the charterer must pay compensation in accordance with Art. 122 if the demurrage days are exceeded. If the ship is chartered by more persons than one she cannot be detained beyond the demurrage days except with the consent of all parties. Where the vessel is chartered by more than one person, and one or more of them cancels his contract on account of prohibitions affecting the goods, the Commander may cancel the remaining contracts when the freight he would earn by fulfilling them is less than half the original total freight contracted for.

The latter part of the article refers to what in England would be called a "general ship" when put on the berth as such by her owners; it does not apply to the case of a ship chartered by one person and by him put up as a general ship; that case is met by Art. 112, *ante*.

B. 90, F. 276, G. 631, 638, H. 499, 500, 506, I. 551, P. 547, S. 690. E. 94.

160. If the ship is lost or becomes a constructive total loss in the course of the voyage, the charter-party becomes void. The Commander is nevertheless bound to take such measures as are prescribed by Art. 57 in the interests of the cargo. In such cases the freight earned is calculated *pro rata* on the amount of the voyage performed, taking into consideration the time occupied and any special

* In the Swedish Code, here as in other cases, the amount of compensation is settled by arbitrators.

difficulties and expenses connected therewith. If the *pro ratâ* freight cannot be agreed, either party may require it to be settled by the Court.* The owner of cargo may abandon the goods for the *pro ratâ* freight.

The calculation practically converts a distance into a time *pro ratâ* freight, and would allow such charges as those for the passage of the Suez Canal to be taken into consideration.

B. 77, 96, F. 302, 303, G. 632, 633, H. 482, I. 577, R. 349.

161. If any of the impediments mentioned in Art. 159 happen after the voyage has commenced, either party may cancel the contract, but the charterer must pay *pro ratâ* freight for the voyage performed, as laid down in Art. 160. The master must also take the measures prescribed by Art. 57 in the interests of the cargo-owners.

If the impediment occurs in the port of loading after the cargo is shipped, or in a port of call during the voyage, expenses incurred prior to the cancelling of the charter-party are apportioned on ship, freight, and cargo in accordance with the principles of General Average.

See Art. 187, *post*.

B. 91, 92, F. 300, G. 636, H. 502, 503, 504, I. 573, 574, P. 548, S. 692.

162. If the contract is cancelled for the reasons mentioned in Art. 159, and, in consequence, goods already shipped have to be discharged, the charterer must bear all expenses of discharging if the prohibition affects the cargo only. If the prohibition affects ship and cargo or ship alone, or if the Commander has availed himself of his right to cancel the contract in accordance with the final clause of Art. 159, then the general rule laid down in Art. 136 governs the case.

F. 276, G. 638, 641, H. 499, 500, I. 551, P. 547, S. 690.

163. If the vessel is detained by any cause, either at the port of loading or at a port of call, the charterer may have his goods discharged on giving security for the claims mentioned in Art. 153, in case the goods should not be

* In the Swedish Code by arbitration. See Art. 152, *ante*.

reloaded in proper time after notice being given by the Commander. If there are more charterers than one, none of them can demand the discharge of their goods unless the others consent, if the discharge in any way prejudices them.

B. 86, 89, 94, F. 278, G. 639, H. 478, 505, I. 552, 570, P. 554, 556, S. 691, 683, 684. E. 95, 96, 115, 119.

164. If a vessel has to make a port of refuge after sustaining damage, and the surveyors report* that cargo, either in whole, or as to its greater portion, would be injured by detention during the repairs, the charterer may cancel the contract and dispose of the goods, on payment of *pro rata* freight ascertained in accordance with Art. 160. If there are several charterers, however, the rule does not apply if any of them insist on the prosecution of the voyage.

B. 94, F. 293, 296, G. 640, H. 478, 511, I. 570.

165. If copies of a Bill of Lading have been transferred to different persons, then the first despatched and delivered gives priority, provided its holder is, in accordance with the 2nd part of Art. 137, entitled to demand delivery of the goods.

This rule does not apply if the copies are numbered in accordance with Art. 133. In this case, the person holding the Bill of Lading with the lowest number has priority. If, however, the goods have been properly delivered to the holder of another Bill of Lading, such holder is not bound to re-deliver the goods unless it is proved that he got possession of the Bill of Lading improperly, or has been guilty of gross negligence.

B. 44, G. 647, 650, H. 516, 517, I. 557, P. 539, S. 716.

166. If a purchaser of goods who has received a Bill of Lading for them refuses to accept or meet a Bill of Exchange properly drawn upon him for the purchase money, or fails to fulfil any other agreed condition, the

* The Swedish Code refers to Art. 41 as regulating the survey.

vendor may stop the discharge and dispose of the goods in some other way.

The same rule applies when, before the goods have been paid for in full, the purchaser is declared to be insolvent, or is unable to pay his Judgment debts, or if, being a merchant, he has suspended payment; if the money is in any of these cases paid in full, the rule does not apply.*

If the original purchaser has transferred the Bill of Lading to a third person, the right to stop does not operate against such third person unless the Bill of Lading contains a clause prohibiting transfer, or it is proved that the holder of the Bill of Lading got possession of it improperly or has been guilty of gross negligence.

If the purchaser has accepted a Bill of Exchange for the purchase money, or made any payment on account, or made any necessary disbursements on account of the goods, the vendor can only avail himself of his right to stop by returning the Bill of Exchange and refunding the purchaser any payment on account and any such disbursements.

This section, relating, as it does, to the law of stoppage *in Transitu*, is peculiar to this Code as a part of the Maritime Law.

167. If a Bill of Lading is lost, it may be declared null and void by the Court at the place where the goods are deliverable. The person who applies for the cancelling of such Bill of Lading must, in his application to the Court, shew his legal right to the Bill of Lading which is lost or has disappeared, and declare his willingness to make oath that he has not transferred it to anyone. If the Court grants the application, it fixes a time for public notice to the holder of the Bill of Lading which is lost or has disappeared; such term must not be less than 12 weeks nor

* The Swedish Code is slightly different: it reserves to the purchaser or his estate in Bankruptcy the right to receive the goods on payment of the purchase money.

more than one year. The notice must be advertised three times in the newspapers in which official notices appear, with intervals of at least eight days between each advertisement.

Delivery of the goods to which such Bill of Lading refers may be ordered on security being given, after the application is granted ; if it is required sooner, a special decree of the Court is necessary.

The Swedish Code gives more minute instruction for the application, requires the notice to be posted on the doors of the Court as well as advertised in the papers, gives an interval of a fortnight for the advertisements, and if the Bill of Lading is not produced, authorises a formal decree cancelling it, and makes no provision for delivery of the goods prior to the issue of the notice.

168. A person who has obtained possession of a Bill of Lading in the manner referred to in Art. 134, and who still holds it, is not bound to give it up to the person who has lost it unless it is proved that he got possession of it improperly, or was guilty of gross negligence.

169. If the agreement relates to the carriage of a named person as passenger, and such person dies before the voyage begins, or falls ill, or for other reasons is unable to proceed with the ship, then only half the passage-money is payable if notice of the fact is given before the ship sails. If in any other circumstances a person who has engaged a passage fails to join, he must pay the full fare.

B. 128, G. 667, 668, H. 522, 524, I. 583, S. 694, 696. E. 136, 137.

170. An agreement for the conveyance of passengers is cancelled without compensation on either side when the ship is lost or becomes a constructive total loss, or when any of the impediments mentioned in Art. 159 supervene. If the voyage has commenced, the passengers must pay passage-money *pro rata* for the portion of voyage performed, which is calculated in accordance with the rules laid down in Art. 160.

The Swedish Code, instead of enumerating the cases of loss, &c., of the ship, refers simply to the causes mentioned in Art. 160 as well as in Art. 159.

B. 130, G. 669, 670, 671, H. 525, I. 584, 587, S. 697, 698. E. 138, 139.

171. Passengers must carefully comply with the regulations of the ship for good order and discipline on board, and are subject to the regulations laid down in Art. 81.

B. 123, G. 666, H. 528, S. 700. E. 133.

172. Where goods belonging to a passenger and delivered by him to the Commander or person authorised to take charge of such goods are damaged or lost, the same rules as are given above for compensation in the case of other lost or damaged goods are applicable.

B. 122, G. 674, H. 532, I. 589, S. 703. E. 144, 145.

173. A Commander may retain the goods of a passenger until the passage-money and victualling charges are paid, and has the same right with respect to such goods as are given him by Arts. 155—157 in respect of other goods on which freight has not been paid.

B. 124, G. 675, H. 533, I. 589, S. 704. E. 147.

F. W. RAIKES.

VI.—THE FUNCTION OF EVIDENCE IN ROMAN LAW.—II.

Torture.

TORTURE was the antithesis of the oath in this respect, that it was inflicted on free persons (with few exceptions) only in criminal cases. It was used as a means of evidence and as a mode of punishment. The former only will be treated in this place. As a means of evidence it was, like the combat, no doubt adopted from a belief that in the cases where it was used the truth was not attainable by other means. Torture aimed at extorting confession, and confession was the safest of all evidence.* In the

* This was the view held even by Bacon, who compares experiment in nature to torture in legal practice as the best means of eliciting truth. *Nov. Org.*, i., 98. Parthenius Litigiosus, bk. ii., c. 8 (Verona, 1618), regards torture

language of the Civilians, where there was a single witness *non jus deficit sed probatio*. And the object of torture was, like that of the oath, to change *semiplena* into *plena probatio*. For centuries it was, as Verri remarks, supported by popular feeling, and was accepted as a *pis aller* for reasons which have already been given. It continued to exist in spite of the opinion of its worthlessness which in a greater or less degree was held by Greek and Roman, not to speak of modern, writers. Aristotle, classing it with the oath as one of the *ἀτεχνολογίστοις*,* urges as the argument in its favour that it appears to carry with it absolute credibility, as the argument against it that men when constrained speak falsehood no less than truth, and will persist in not speaking the truth, and will easily falsify as being likely the sooner to get off.† Cicero, in words which it is impossible to translate satisfactorily, says *Tormenta gubernat dolor, regit quæstio, flectit libido, corrumpit spes, infirmat metus, ut in tot rerum angustiis nihil veritati locus relinquatur*.‡ Seneca observes bitterly that it forces even the innocent to lie. Ulpian regards it as *res fragilis et periculosa et quæ veritatem fallat*.§ Augustine recognises its fallacy. "If," says he, "the accused be innocent, he will undergo for an uncertain crime a certain punishment, and that not for having committed a crime, but because it is unknown whether he committed it." || Voet follows in the same track. No one, says he, can contemplate the old method of torments,

as a sure remedy against falsehood. Even Ulpian defines *quæstio* as *tormenta et corporis dolorem ad eruendam veritatem*, *Dig. xlvii., 10, 15, 41*, though in the next title (see below) he admits its peril.

* The *artis expertes* of Cicero, *Top.*, 24. In the *Auctor ad Herennium* evidence given under torture comes under the head of *approbatio*, itself a branch of *constitutio conjecturalis*. The phraseology of Aristotle and Cicero was adopted by Quintilian in his division of *probatio* into *artificialis* and *inartificialis*, and through him came down to later jurists, such as Menochius.

† *Rhet.*, bks i., c. 15, 26.

‡ *Pro Sulla*, 28.

§ *Dig. xlviii., 18, 1, 23.*

|| *De Civ. Dei*, bk. xix., c. 26.

especially in accusations of witchcraft, without laughter, nay rather, without tears, on account of the crowd of innocent persons thereby delivered to death, and of guilty who escape. He compares indiscriminate torture as a means of obtaining truth with the trial by battle, both being equally unsatisfactory. At the same time he agrees with Ulpian in calling it *inquisitio veritatis*.^{*} Theoretical objections to the system are often urged by the authors of books of practice, dealing with it, such as Damhouder, von Rosbach, and von Boden, as well as by a long series of non-professional writers, such as Montaigne, Montesquieu, Verri, Manzoni, and legal writers like Beccaria and Bentham.[†] Few apologists are found. Among them are Simancas, Bishop of Badajos,[‡] Engel,[§] Sir R. Wiseman,^{||} and Muyart de Vouglans, who derives the origin of torture from the law of God.[¶] The frequent infliction of torture made it a commonplace of procedure, and allusions to it are very frequent in both classical and later literature. A few examples may be interesting. Mention of it occurs in well-known lines of Roman poets,^{**} and examples of its infliction (actual or threatened) occur in the New Testament^{††} as well as in Cicero, Livy, Valerius Maximus, Tacitus, Pliny,

^{*} *Comm. ad Pandectas* (6th ed., The Hague, 1734), on *Dig.* xlviii., 18.

[†] One of the most direct attacks was *De Pijnbank wedersproken en bematigt*, Rotterdam, 1651.

[‡] *De Catholicis Institutionibus Liber ad præcavandas et extirpandas Hæreses admodum necessarius*. Rome, 1575.

[§] *De Torturâ ex Foris Christianis non proscribendâ*. Leipzig, 1733.

^{||} *Law of Laws*, p. 122. London, 1686.

[¶] *Instituts au Droit Criminel*. Paris, 1757.

^{**} *Verbera, carnifices, robur, piz, lamina, tædæ*. *Lucr.*, iii., 1030. *Lygdamus uratur, candescat lamina, vernæ*. *Prop.*, iv., 7, 35. *Uritur ardenti duo propter lintea ferro*. *Juv.*, xiv., 22. Torture was used at Carthage as well as at Rome. The assassin of Hasdrubal underwent it. *Livy*, xxi., 2.

^{††} *Ἀντάγεισθαι* was threatened to St. Paul:—*Acts*, xxii., 24.

Tertullian, Augustine, and others. Among later writers it is sufficient to mention the names of Lope de Vega,* Shakespeare,† and Molière,‡ in addition to the French, Italian, and Spanish historians. The subject had also what may be called its technical literature, for a writer in the Netherlands actually wrote a book on the unpromising subject of the rack.§

Torture in Roman Law was used as a means of evidence for two purposes, to obtain (1) a confession from a witness or an accused person before condemnation, (2) a confession of the names of accomplices after condemnation.|| The first kind was known by the Canonists as torture *in caput proprium*, and corresponds to the *question préparatoire* of old French Law; the second was the torture *in caput alienum* of Canon Law, the *question préalable* of French Law. It is, as has been already said, the distinguishing feature of an inquisitorial system, one in which the Court to a certain extent creates its own evidence by interrogation. The right of interrogation once established, it was not a long step to take to supplement interrogation by torture. The

* In *El Perro del Hortelano* one of the characters says, "Here's a pretty inquisition!" to which the answer is, "The torture will next be applied." Both Lope de Vega and Calderon were, no doubt, from their connexion with the Inquisition, quite at home in the law and practice of torture.

† It is obvious from *Cymbeline*, Act IV., Sc. 3 and 4, that Shakespeare must have thought that torture was practised in Britain at the time at which the action of the drama is laid. The allusion to torture in the last scene of *Othello* seems to be in strict accordance with the law which would be in force in a dependency of Venice.

‡ Harpagon, in *L'Avare*, Act IV., Sc. 7, threatens to put his whole household to the question. Racine, in *Les Plaideurs*, makes Dandin invite Isabelle to see "*la question*" as a means of passing an hour or two. -

§ Hieronymi Magii Anglarensis de Equuleo Liber Postumus. Amsterdam, 1664.

|| As a part of the punishment torture was in frequent use, but this side of the subject does fall within the scope of this Article. Numerous examples will be found in the Code and Novels, e.g., *Nov. cxxiii.*, 31.

law of England has always shown itself averse to the inquisitorial system and as a consequence (at least in theory) to the torture, which may be regarded as an outcome of the procedure, the chief end of which was to extort a confession from the accused.

The Roman law of torture is the basis of all later law on the subject, though it is in what a medieval Italian or Spanish jurist would have considered a very unenlightened state in view of the immense development which it afterwards underwent. It was said by Cicero to rest originally on custom (*mores majorum*), but there is no allusion to it in the XII Tables, perhaps because as a codification of customary law they did not profess to be complete. It was in full vigour in the time of Cicero, who mentions (besides the illegal tortures inflicted by Verres in Sicily) the use of the rack (*equuleus*)* and the technical word *postulare* for the demand of a slave to be tortured.† The law as it existed under the later Empire is contained mainly in the titles *De Quæstionibus*‡ of the Digest§ and the Code,|| the former consisting largely of opinions from the *Sententia Recepta*¶ of Paulus, the latter being for the most part a repetition of Constitutions contained in the Theodosian Code.** Both substantive law and procedure were contained in these

* *Pro Milone*, 57.

† *Pro Roscio*, 28, 77.

‡ *Quæstio* properly included the whole process of which torture was a part. In the words of Cujacius, *quæstio est interrogatio quæ fit per tormenta, vel de reis, vel de testibus qui facto intervenisse dicuntur*. Both *tormenta* and *βάρανοι*, its Greek equivalent, generally occur in the plural. The very name of *quæstio* perhaps tended to obscure the inherent cruelty of the process. It drew attention to the search for truth at the risk of losing sight of the means of the search.

§ *Dig.* xlviii., 18.

|| *Cod.* ix., 41.

¶ v., 14, 15, 16.

** ix., 35. The principal modern authorities on the Roman law of torture are Westphal, *Die Torturer der Griechen, Römer, und Deutschen*, Leipzig, 1785, and Wasserschleben, *Historia Quæstionum per Tormenta apud Romanos*, Berlin, 1836.

texts of Roman Law, the latter, however, not as fully as in medieval text-books and codes, a large discretion being left to the Court. Torture was used both in civil and criminal trials, but in the former only in the case of witnesses of obscure position, chiefly slaves, freedmen, and infamous persons—such as gladiators,* and where the truth could not be otherwise elicited, as in cases affecting the inheritance,† and in the absence of other evidence.‡ Torture of a free citizen in civil cases was forbidden by the *Lex Julia de vi*,§ and its place was taken by reference to oath. Roman Law was eminently a respecter of persons and the general view of the law is shortly put in a striking constitution of Justinian, promulgated in 529.|| During the Republic torture appears to have been confined to slaves in all cases, but with the Empire (according to Dion Cassius under Tiberius), a free citizen became liable to it if accused of a crime, though not as a witness. If a Christian, of however high a condition, he was subject to torture during the period between the edict of Diocletian in 303 and the edict of toleration of Galerius in 311.¶ This short period

* *Dig. xxii., 5, 21, 2.*

† *Res hereditaria*. Even in this case a slave could not be tortured if the testator had made oath of the value of his estate, *Nov. xlviii.* The *heres* could enter before the slaves of the inheritance had been tortured. Paulus, *Sent.*, iii., 5; *Dig. xxix., 5, 5, 2.*

‡ *Si aliis manifestis indicibus accusationem suam non potest comprobare: Cod. ix., 8, 3.* This applies in the text only to treason, but no doubt the rule extended to other prosecutions.

§ *Dig. xlviii., 6, 7.*

|| *Si vero ignoti quidem et plene obscuri sint, atque videantur circa testimonii veritatem aliquid voluisse corrumpere, tormentis etiam subijci possint: Nov. xc., 1, 1.* This is no doubt the origin of the medieval maxims (which were, however, by no means universally recognised), *Vilitas personæ est justa causa torquendi testem* and *Tortura purgatur infamia*. *O poca nostra nobiltà di sangue* was the maxim of a poet and not of a jurist.

¶ This cruelty was afterwards retaliated on the Pagans by the Christian Emperors: Ammianus Marcellinus, xxi., 12.

excepted, the liability of a free man to torture under the Empire depended on two conditions, the nature of the accusation and the rank of the accused. On an accusation of treason every one, whatever his rank, was liable to torture, for in treason the condition of all was equal.* The same was the case with those accused of witchcraft (*magi*), who were regarded as *hostes humani generis*.† Certain executive officers, such as clerks, &c., of magistrates,‡ collectors of public tribute,§ and *numerarii* and *tabularii*,|| were subject to it in particular cases. A wife might be tortured (but only after the slaves of the household had been put to the torture), if accused of poisoning her husband. In charges of treason the accuser was liable to torture if he failed to prove his case.¶ In accusations of crimes other than treason, witchcraft, and poisoning by a wife, certain persons were protected by their dignity or their tender age. The main exceptions are contained in a constitution of Diocletian and Maximian,** and include soldiers, nobles of a particular rank, *i.e.*, *eminentissimi* and *perfectissimi* and their descendants to the third generation, and *decuriones* and their children to a limited extent, that is to say, they were subject to the torture of the *plumbata* in certain cases, such as fraud on the revenue and extortion. In addition to these, debtors,†† priests and deacons (but not those in minor orders)‡‡ children under fourteen, and pregnant women were exempt. A free man could be tortured only where he had been inconsistent in his depositions or where there was

* *Cod. ix.*, 8, 4, *Nulla dignitas a tormentis excipitur*; *Paulus, Sent.*, v., 29, 2.

† *Cod. ix.*, 18, 7.

‡ *Nov. cxxxiv.*, 9

§ *Nov. cxxviii.*, 3.

|| *Cod. xii.*, 50, 1 and 2.

¶ *Cod. ix.*, 8, 3.

** *Cod. ix.*, 41, 8—11.

†† *Cod. x.*, 19. At one time debtors were confined in private prisons and ill-used by their creditors. See, *e.g.*, *Livy*, iv., 36. This private torture was forbidden under the Empire: *Cod. i.*, 4, 23; ix., 5.

‡‡ *Nov. cxxiii.*, 19.

a suspicion that he was lying.* No one was to be chained in prison before trial, nor could a prisoner be tortured while awaiting trial. Wrongful infliction or threatened infliction of torture was ground of appeal even before sentence.† As a rule, only a superior judge could order torture, but in certain cases it could be decreed by the *judices pedanei* where the accused was *privatæ conditionis*.‡ An appeal from an order to torture was competent to the accused, except in the case of slaves, when the appeal could only be made by the master.§ The appellant was to remain in prison during the appeal, but was not to be further tortured.|| Withdrawal from prosecution (*abolitio*) was not as a rule allowed after the accused had undergone the torture.¶ Capital punishment was not inflicted until after conviction or confession under torture.**

The rules regulating the torture of slaves were numerous and precise, and were conceived in a spirit of as much fairness as such rules could be.†† Some of the most important were these. The amount of torture was at the discretion of the judge, but it was to be applied so as not to injure life or limb. The examination was not to begin by torture, some grounds must be alleged, and other proofs must be exhausted first. The evidence must have advanced so far that nothing but the confession of the slave was wanting to complete it.‡‡ Those of weakest frame and tenderest age were to be tortured first. Except in treason, the unsupported evidence of a single witness was

* *Cod.* iv., 20, 13.

† *Dig.* xlix., 5, 2.

‡ *Cod.* iv., 20, 15.

§ *Dig.* xlix., 1, 15.

|| *Cod.* vii., 62, 12.

¶ *Cod.* ix., 42, 3.

** *Cod.* ix., 47, 16.

†† The earliest summary of rules seems to be that contained in the *Sententia* of Paulus, v., 14. Most, if not all, of the rules applying to slaves apply also to freedmen, the *patronus* of the freedman taking the place of the master of the slave. The Burgundian laws made the *colonus* as well as the *servus* liable.

‡‡ That these rules were not always observed is obvious from the complaint of Tertullian, *Apol.*, c. 2 (*torquemur confitentes*).

not a sufficient ground for ordering torture. The voice and manner of the accused were to be carefully observed. A spontaneous confession, or the evidence of a personal enemy, was to be received with caution. Repetition of the torture could only be ordered in the case of inconsistent depositions or denial in the face of strong evidence. There was no rule limiting the number of repetitions.* Leading questions were not to be asked; such a question as "Did Aulus kill Titius?" was improper; it should have been, "Who killed Titius?" It was a maxim of Roman Law that torture of slaves was the most efficacious means of obtaining truth.† If a man affirmed that he was free, but it was afterwards discovered that he was a slave, his evidence given without torture was disregarded.‡ Slaves could be tortured either as accused or as witnesses, on behalf of their masters in all cases,§ but against their masters only in accusations of treason, adultery, frauds on the revenue, coining, and similar offences (which were regarded as a species of treason), attempts by a husband or wife on the life of the other, and in cases where a master had bought a slave for the special reason that he should not give evidence against him.|| The privilege from accusations by the slave

* In later times the number of repetitions was limited by law, e.g., the *Praxis Ecclesiastica et Secularis* of Suarez de Paz, Salamanca, 1583, limits the number of inflictions to three. So does the latest European Code dealing with the subject, the *Constitutio Criminalis Theresiana* of 1768.

† *Cod. i.*, 3, 8.

‡ *Cod. iv.*, 20, 13; *Nov. xc.*, 6.

§ *Cod. iv.*, 20, 8.

|| During the Republic, the only case in which the slave could have been tortured against the master appears to have been where the latter was accused of incest; Cicero, *Orat.*, 34, *pro Milone*, 22. It appears from the latter authority that torture might be inflicted out of court. The record of evidence, obtained by torture, that a slave was a runaway, was receivable in a second charge of the same nature, for in such a case the torture was against the slave, not against the master; *Dig. xxii.*, 3, 7.

extended to the master's father, mother, wife, or tutor, and also to a former master. On the same principle a freedman could not be tortured against his patron. The privilege does not apply where the slave was joint property, and one of his masters had been murdered by the other, where he was the property of a corporation, and an accusation was brought against a member of the corporation, or where he had been manumitted for the express purpose of escaping torture. In a charge of adultery against a wife, her own, her husband's, and her father's slaves could be put to the torture. Before putting a slave to the torture without the consent of his master, due *postulatio* must be made from the master, security must be given for the value of the slave, and the oath of calumny be taken.* The master of a slave tortured on a false accusation could recover double his value from the accuser. A curious illustration of the law is that additional damages were claimable in an action under the *lex Aquilia*, where the defendant had killed a slave whom he was about to put to the torture in order to discover his accomplices in a fraud committed on the master.† The undergoing of torture had at one time a serious effect on the after-life of the slave, for in the time of Gaius a slave who had been tortured and convicted could, on manumission obtain no higher rights than those of a *dediticius*.‡ This disability of course ceased on the abolition of the status of *dediticii*. The principal forms of torture in use were the *equuleus*, or rack, the *plumbatæ*, or leaden balls, the *ungulæ*, or barbed hooks, and the *fidiculæ*, or cord compressing the arm.§

The history of torture subsequent to the Roman Law is a subject too vast for treatment at any length in this place. The literature of the subject is enormous; as an example

* *Cod.* ii., 59, 1, 1.

† *Dig.* ix., 5, 23, 4.

‡ Gaius, *Inst.*, i., 13.

§ Seneca, *De Ira*, iii., 19, 1, mentions also *talaria* and *ignis*.

it may be stated that the discussion of it in Farinaccius occupies 251 closely-printed folio pages with double columns.* The law, introduced into most European countries through the *Leges Barbarorum*,† was gradually defined and completed by both ecclesiastical and secular writers, among whom Bartolus was one of the earliest to introduce some of the refined analyses of *indicia* which afterwards became so striking a feature of the text-books and codes. Farinaccius divides *indicia* into no less than six classes, most with sub-classes. In the *Constitutio Carolina* of Charles V. (1532), 21 articles out of 218 deal with *indicia*. Some of the *indicia* given by the jurists are very curious. Among other rather dangerous ones are *vehemens fama* and previous conviction. Antonio Gomez recognised as an *indiciu*m the flowing of blood from the corpse of a murdered man in presence of the accused,‡ but this was generally abandoned by later writers. Torture itself was divided by Farinaccius and others into *levis*, *gravis*, and *gravissima*. It afterwards became one of the burning questions of this branch of the law whether there were three or five grades of torture. The latter was the number favoured by Julius Clarus§ and some of the French authorities.|| The inseparable connection of evidence and torture is proved by the very title of the part of Farinaccius' work which contains most of the law of torture (*De Indiciis et Torturâ*). The law was contained partly in the works of

* *Praxis et Theoria Criminalis*, lib. ii., tit. v., quæstt. 36—51. Frankfort, 1622.

† As compared with the Roman law there seems to be in them a leaning towards humanity. The *Lex Salica*, c. 42, is interesting on account of its allowing redemption of the slave by the master during torture, at a rate varying according to the period of the torture at which he was redeemed.

‡ *Variae Resolutiones*, p. 412. Antwerp, 1593.

§ *Practica Criminalis Finalis*. Lyons, 1637.

|| The five grades were threats, taking to the place of torment, stripping and binding, lifting on the rack, and racking.

jurists, founded on the Roman Law, partly in statutory enactments, such as codes of criminal procedure. Of the former, the most noticeable are the works of Hippolytus de Marsiliis (the *Averolda*), Paris de Puteo, Farinaccius and Julius Clarus and the *Sacro Arsenale* in Italy, of the Grand Inquisitor Nicholas Eymerico, Suarez de Paz, Antonio Gomez, Vilanova, and Juan de Hevia Bolaños in Spain, of Langer, von Rosbach, and von Boden in Germany, and of Damhouder, van Leeuwen, and Voet in the Netherlands.* Of the latter the principal examples are the Constitutions of the Emperor Frederick II. for Sicily in 1231 (probably the earliest statutory recognition of torture after the *Corpus Juris* and the *Leges Barbarorum*), the *Siete Partidas*, the *Carolina* of Charles V. (1532), the *Ordonnance sur le Style* of Philip II. (1570), the *Ordonnance* of Louis XIV. in 1670 (founded upon that of Philip II.), the Code of Christian V. of Denmark, 1683, and the latest statutory recognition of torture, the *Constitutio Criminalis Theresiana*, promulgated under the ministry of Prince Kaunitz in 1768.† The rules of practice in the secular and ecclesiastical Courts were not identical. Bolaños notices some of the points in which they differed.‡ The Canon Law was, as far as it went, more humane than the Roman Law. It laid down that no confession was to be extracted by torture,§ that it was not to be inflicted without precedent *indicia*,|| and

* Extracts from some of these writers, especially the German, will be found in Mr. H. C. Lea's *Superstition and Force*, p. 463. 3rd ed., Philadelphia, 1878. The names of many other writers will be found in Lipenius, *Bibliotheca Juridica*, Leipzig, 1757, s.v. *Tortura*, and the supplements to the work published later.

† The illustrated edition was suppressed a few days after its publication, Bentham, *Works*, vol. i., p. 414.

‡ *Curia Filipica*. Madrid, 1825.

§ *Decretals*, pt. ii., 15, 6, 1.

|| *Decretals*, v. 41.

that in all cases charity was to be used.* The scanty discussion in the text of the Canon Law was largely supplemented by the writings of the Casuists, who treated the subject as a matter affecting the conscience.† It will be sufficient to cite in this place as an example the treatment of it by Escobar and Liguori. The former raises and decides some very curious questions, among others, that the curator of an accused person under twenty years of age need not be present at the torture of his ward, and that it is an *indicium* insufficient to call for torture that two witches testify that the accused, a woman of good fame, was present at their meetings. He supports the dangerous view that an Inquisitor may follow a probable opinion in ordering torture, relinquishing a more probable.‡ Liguori is more diffuse, and incorporates the opinions of many of the Spanish Casuists. On the whole his views appear to be more humane than the prevailing practice. In thorough accordance with Roman Law he defines the object of torture as the turning of *semiplena* into *plena probatio*. For this proper *indicia* are necessary. He then proceeds to decide certain questions which had arisen, the most interesting of which deal with the nature of the sin of which the accused and the judge are guilty in particular instances. A judge sins gravely if he do not attempt all milder means of discovering truth before resorting to torture. He sins in a criminal cause, or in one of notable infamy, if he bind the accused by oath to tell the truth before there is proof against him. It is the same if without oath he use threats,

* *Decretum*, pt. ii., 12, 2, 11. In the Instructions of the Canon Law to a Christian judge (taken from Augustine), he is praised for eliciting confession of crime not by rack, hooks, or flames, but by the strokes of rods; *Decretum*, pt. ii., 23, 5, 1.

† In the *Moralis Theologia* of Baldellus, Lyons, 1637, it is expressly included under the title *De Conscientiâ*.

‡ *Moralis Theologia*, tract. v., cc. 3, 7.

terror, or exhibition of torments* to confound the witness.† If anyone, to avoid grave torments, charge himself with a capital crime, he does not sin mortally.‡ It was a doubtful question whether he sinned gravely in such a case. The more probable opinion was that he did not; for a man is not justified in assisting to put himself to death, as he is not master of his own life. If the accused have fixed infamy on another, he is not bound to retract simply to restore the character of another and by so doing expose himself to a renewal of torture.§ Signs of enlightenment appear in the opinions that the bleeding of a corpse in the presence of the accused, and the inability of witches to shed tears are insufficient *indicia*, and that excess of torture makes a confession void.|| The mild precepts of the earlier law of the Church were overlaid by the later instructions issued by the Inquisition. Among these the most important were the codes of Torquemada (1484), and Valdes (1561),¶ for Spain, and those of Charles V. (1545 and 1550), for the Netherlands. The rules in themselves were not as merciless as the ampliation put on them by the Inquisitors. For instance, by Torquemada's instructions torture could not be repeated unless in case of retraction. This led to the subtlety of calling renewed torture a continuation and not a repetition. Legality of

* This was a mitigated form of torture called presentment, in which the accused was simply shown instruments of torture or placed upon the rack. It was also known as *verbalis* in contradistinction to *realis*, the actual infliction. The distinction is insisted on in Paschal Freirius, *Inst. Juris Criminalis Lusitani*, p. 203, Lisbon, 1794, though torture had become obsolete in Portugal long before that time. Gabriel Alvarez de Velasco, *Judex Perfectus*, p. 237, Lausanne, 1740, calls the two kinds of torture *tortura actualis* and *propinquus terror*.

† *Theologia Moralis*, bk. ix., § 202.

‡ *Ibid.*, § 274.

§ *Ibid.*, § 275.

|| *Ibid.*, § 202.

¶ These rules are to be found in Llorente's *History of the Inquisition*, cc. vi., xxii.

interpretation was perhaps not to be expected from the Holy Office, in whose view heresy took the place of the treason of Roman Law,* with the convenient consequence that the confiscation of the property of the offender followed, as in a conviction for treason. Both the ecclesiastical and secular tribunals, like the Roman tribunals in the time of Tertullian, appear to have often exceeded the law. A famous historical instance is the torture of the persons accused of bringing the plague into Milan in 1630 by smearing the walls of the houses. An analysis of the case was undertaken by Verri† and Manzoni,‡ and puts in a clear light some of the abuses common in times of popular panic. The objections made to the legality of the proceedings in this case by Manzoni are a good illustration of the abuse of torture as a means of evidence. The main objections are these: (1.) The unsupported evidence of an accomplice was treated as an *indicium* in a case which was not one of those exceptional ones where such an *indicium* was sufficient. The evidence of two witnesses or the confession of the accused was necessary to establish a remote *indicium*, such as lying. (2.) Hearsay evidence was accepted when direct evidence was attainable. (3.) The confession made under torture was not ratified afterwards. (4.) It was made in pursuance of a promise of impunity. (5.) It was of an impossible crime. The case deserves notice for a singular instance of superstition which occurred in it, and was not unknown in other cases of torture, as it is alluded to by Eymerico. In the course of the torture a priest was

* Heresy, under the name of *læsa majestas divina* (sometimes *læsa religio*), became treason against God, and it was a pious duty to punish it. The Church, *per non perder pietà si fe' spietato*.

† *Osservazioni sulla Tortura*.

‡ *Storia della Colonna Infame*. It is remarkable that neither writer makes any allusion to Beccaria, whose work had appeared in 1764, thirteen years before that of Verri.

called in to exorcise the evil spirit which was supposed to have entered the accused and made him obstinate in refusing to acknowledge the truth.

It was in trials for witchcraft that the law as to evidence was most often exceeded, and this no doubt for the reason that at certain periods of history whole nations were seized with panic fear of supernatural practices. Torture, too, in an aggravated form was used, from a belief that the Devil protected his votaries from feeling torture of an ordinary kind. In the Scotch trials anything was admitted as evidence.* The *indicia*, as given by Continental jurists, were peculiar to the offence. For instance, among those stated by Sinistrari di Ameno, an Italian jurist of the 17th Century, are absence of the accused from bed during the night, drawing cabalistic signs on the ground, and anointing the body.† The great text-book of procedure in witchcraft, the *Malleus Maleficarum*,‡ goes so far as to admit witnesses, who would have been incompetent in ordinary cases, to testify against but not in favour of the prisoner. Special *indicia* for witchcraft were also the subject of legislative regulation. Arts. 44 and 52 of the *Constitutio Carolina* contain the law of the Empire on the subject. As lately as 1657 a code of instructions containing a list of *indicia* was issued by the Inquisition.§

The practice of torture became more settled by the practice of centuries, and in the days of its full vigour the comparatively simple tortures known to the Roman Law received an indefinite extension. A Roman jurist would

* See the reports of the trials of Bessie Dunlop, 1576, and Dr. Fian, 1590, in Pitcairn's *Criminal Trials*.

† *De Delictis et Pœnis Tractatus Absolutissimus*. Rome, 1754.

‡ Compiled by Sprenger and Krämer in 1489, in pursuance of a Bull of Innocent VII. in 1484. The work went through numerous editions.

§ These will be found in the later editions of Father Frederick Spee's *Cautio Criminalis*.

scarcely have understood the later developments of the *toca*,* the *pendola*,† the licking of the feet by a goat,‡ the cruelty of the vigil or waking,§ and the tearing out of the finger nails in the trial of Dr. Fian.

England, Aragon, and Sweden appear to be the only European countries in which torture never existed as a system. But even in these countries it was sometimes inflicted extra-legally,|| and possibly with more severity than in those countries in which its use was defined by rules.

JAMES WILLIAMS.

* *I.e.*, the pouring of water into a gauze bag in the throat, the gauze being thus gradually forced into the stomach.

† *I.e.*, the swinging pendulum, so graphically described in one of Edgar Allan Poe's tales.

‡ Mentioned in the *Praxis Judiciaria* of Locatus Umbertus, 1568.

§ Invented, by his own admission, by Hippolytus de Marsiliis [as regards the West, but long in use in China]. It consisted in the artificial prevention of sleep, and was often used in Scotland, especially in the most flourishing period of torture in that kingdom, the reign of James VI.

|| *E.g.*, by the Privy Council in England and by the secret committees in Sweden. Something like the *peine forte et dure* of old English criminal practice existed in Aragon, in spite of the Statute of 1335 making torture illegal. Du Cange, *s.v.*, *Fame Necare*.

VII.—THE DOCTRINE OF NOTICE TO TRUSTEES.

[WARD V. DUNCOMBE.*]

THE points settled by the decision of the House of Lords in this case appear to be the following :—

1. Where two persons at different times acquire equitable interests, for value, in a fund held by trustees, and one only of the trustees has notice of the earlier incumbrance, while all the trustees have notice of the subsequent charge, the notice as regards the earlier incumbrance is sufficient to protect the earlier incumbrancer in his priority, so long as the trustee, who has notice of his charge, lives.

2. The death of such trustee does not affect the relative position of the aforesaid two incumbrancers with regard to the fund.

The judgments given by the Lord Chancellor and Lord Macnaghten respectively must, apart from settling the above points at issue, be considered highly important, in so far as Lord Herschell's judgment professedly purports to lay down his theory on the intricate doctrine of notice to trustees, while Lord Macnaghten gives his views on a side question of priority, which, if adopted, might tend to considerably affect the dealing with equitable interests in personal property held by trustees. Lord Herschell, in reviewing the authorities bearing on the points at issue, finds that in all of them the essence of the judgments rests on this one consideration, viz., that the nature and effect of notice is this, that it brings about a change in the *apparent possession* of the equitable interest transferring such apparent possession from the *cestui que trust* to the incumbrancer giving such notice. Apparent possession, therefore, being

* L.R. [1893] A.C. 369.

the common central element towards which all those authorities gravitate, must be taken to form the basis on which the equitable rule as to notice rests; while all other considerations, though intermixed with the former, can only be deemed secondary and accidental.

There can be no doubt that such is Lord Herschell's theory, if we read the following passages appearing in his review of the authorities :

Dealing with *Dearle v. Hall* (3 Russ. i.), he says : " He (Sir T. Plumer, M.R.) relied on the law laid down in *Ryall v. Rowles* (1 Ves. 348) that if you leave another in apparent possession of personal property you enable him to gain false credit." From Lord Lyndhurst's judgment he quotes : " In cases like the present the act of giving the trustee notice is in a certain degree taking possession of the fund." Lord Herschell observes : " It is true that reference was made to the fact that the party giving notice had done all that was necessary to perfect his title, whilst he who has not given notice has not perfected it. But even here I think the point upon which stress was laid was this, that the party giving notice had taken the property out of the apparent ownership and possession of the *cestui que trust*. This is indicated by the importance attached to the opinions of the Judges in *Ryall v. Rowles*."

Referring to *Foster v. Blackstone* (1 My. and K. 297), Lord Herschell observes : " It will be observed that Lord Lyndhurst again puts in the forefront, as the ground of the decision in *Dearle v. Hall*, the apparent possession left in the *cestui que trust*."

As regards *Smith v. Smith* (2 Cr. and M. 231), Lord Herschell says : " I cannot but think therefore that either there is some inaccuracy in the reports of Lord Lyndhurst's judgment in *Smith v. Smith*, or that he can have intended to say no more than this, that where one of several trustees has notice of an incumbrance, the *cestui que trust* is no

longer left in apparent possession, for any person asked to take a subsequent assignment, and adopting the precaution which a prudent man would of enquiring of all the trustees, would come to know of the prior incumbrance."

Contrasting *Smith v. Smith* with *Timson v. Ramsbottom* (2 Keen, 35, 52), Lord Herschell remarks: "Where, at the time the second advance is made, one of the trustees has notice of a prior incumbrance, I see no reason why notice of the second incumbrance should give it priority over the earlier assignment. The fund was not at the time of the second advance left in the apparent possession of the *cestui que trust*." "Where, however, notice is given to one trustee only who is no longer a trustee at the time the second incumbrancer advances his money, a condition of things has arisen precisely similar to that which led to the rule laid down in *Dearle v. Hall*. The fund is again in the apparent possession of the *cestui que trust*."

In concluding his judgment, Lord Herschell says: "If I am right in the view which I have taken of the basis on which the equitable rule as to notice rests, it disposes of the contention of the appellants."

Now, is this theory * the true solution of the problem of

* I beg, with due deference, to submit that Lord Herschell's theory would have been clearer if he had stated whether in his opinion the incumbrancer, by giving notice enters into possession direct and without the intervention of the trustee, or if he does so through the medium of the trustee. It is evident that the effect would be distinctly different in so far as possession by himself, though not always apparent, would seem to be independent of the existence of his trustee and therefore good for ever (*cf.* also judgment of the Court of Appeal in the case, *In re Wyatt; White v. Ellis*, L.R. [1892] 1 Ch., p. 209), while possession through the trustee would be lost by the latter's ceasing to act.

If I may venture another humble observation, it would be that the word "apparent" in the term "apparent possession" is used in two different meanings. According to Lord Herschell's theory, the apparent possession of the incumbrancer would mean the *evident* possession, while the apparent possession returning to the *cestui que trust* (see above) can only mean possession "appearing to the eye but not true or real" (*cf.* Webster's Dictionary), as he has assigned his title.

the doctrine of notice, the guiding and essential principle on which it rests?

I will try and prove that Lord Macnaghten's judgment in this case impliedly shews that he would hardly answer this question in the affirmative.

As will be remembered, the Lord Chancellor said (p. 382): "Where however notice is given to one trustee only who is no longer a trustee at the time the second incumbrancer advances his money, a condition of things has arisen precisely similar to that which led to the rule laid down in *Dearle v. Hall*. The fund is again in the apparent possession of the *cestui que trust*." His Lordship continues: "In those circumstances the reasons which led the Court to hold in the case referred to, that the title of the second incumbrancer or assignee, who had given notice, must prevail over that of the assignee or incumbrancer earlier in date, are equally applicable." The meaning is clear: An earlier incumbrancer would have to give up his previous precedence through the death (or resignation) of the trustee to whom he has given notice, to another incumbrancer who advances money after such event and gives notice to the then trustees, because at this time the property has got out of the apparent possession of the earlier assignee. This undoubtedly is an absolutely cogent consequence of Lord Herschell's theory, and drawn by himself.

Now let us consider Lord Macnaghten's view on this question of shifting priorities.

In concluding his judgment his Lordship observes (p. 394): "It was said that if the mortgage had not been created until after Mrs. Sharp's death and the mortgagees had then given notice to the surviving trustee they would have gained priority. I take leave, however, to doubt whether the proposition on which the argument is founded can be treated as settled law. There is no authority for it that I know in this country but the case of *Timson v.*

Ramsbottom. I do not think that that case can be regarded as one of much weight." After giving his reasons, and quoting Westbury, L.C., in *Willes v. Greenhill* (4 D. F. & G., p. 150), respecting the duty of an assignee or mortgagee to give notice, he continues :—

"But it may be that when an assignee or mortgagee has once discharged that duty, he has done all that the rule requires of him, and that for the rest the law holds as Lord Cairns lays it down, and that he is not, on a change of trustees, to be deprived of his pre-existing equitable title by the diligence or by the happy thought of a subsequent incumbrancer. Certainly, I can imagine nothing more inconvenient than that it should be possible to have a scramble for priorities on the appointment of new trustees. Nothing, I think, would be less likely to conduce to the security of equitable titles."

It seems impossible to reconcile this view in favour of stable priorities with Lord Herschell's proposition of shifting priorities and the theory on which the latter is based, and the inference cannot, in my opinion, be otherwise than that Lord Macnaghten, in impliedly rejecting the application of the theory, would also necessarily reject the theory itself.

It is neither my object, nor should I feel competent to investigate the respective merits of the views held by the two noble and learned lords, but I may perhaps be allowed a few observations on the bearing of Lord Macnaghten's opinion.

It can hardly be disputed that Lord Macnaghten is right in thinking that it is scarcely fair to an earlier incumbrancer that he should, through the fortuitous event of a change of trustees, be liable to be deprived of his priority by a subsequent incumbrancer's prompt notice. Looking, however, at the other side of the question, would not such tender regard for the earlier incumbrancer frequently work

cruel injustice on the subsequent incumbrancer as well as on the *cestui que trust*? Let us take an instance: A change of trustees, through death, has taken place; the *cestui que trust* fraudulently wants to assign without informing the would-be assignee of the earlier incumbrance. The latter duly makes inquiries of the new trustees, who, not knowing of the earlier incumbrance, answer accordingly. The assignee advances his money and then learns too late that his precaution does not protect him, as there are earlier incumbrancers who, once for all, have secured their priority, and about whom he, with all possible diligence, could not have heard before.

Would not this view, if adopted by the Courts, add a new terror to the acquiring of equitable interest; or, speaking from the standpoint of the *cestui que trust*, would it not make his interest still more difficult of realisation even than it has hitherto been, and would such a condition of things be desirable?

It is curious to note that while, on the one hand, modern legislation, by giving the Courts power to relax a restraint on anticipation, proclaims that even the express will of a settlor or testator shall not, under all circumstances, be strong enough to prevent dealing with equitable property, the decisions of the Courts, on the other hand, and the opinions of Judges, shew that the interpretation of the existing law tends to move in the opposite direction, adding obstacle to obstacle in the way of utilising such property.

The case of *Low v. Bouverie* (L.R. [1891], 3 Ch. D. 82) has practically the effect that if the property of a *cestui que trust* should happen to be in the hands of malevolent or indolent trustees, he would be restrained from anticipating his interest. The above view of Lord Macnaghten, if adopted, would have the same effect in the case of a change of trustees. Such results are certainly regrettable. They can

neither be presumed to be in accordance with the will of the testator or settlor who would have provided otherwise if he had such intention, nor can they be justified from an economical or social point of view.

Only legislation can help us out of this labyrinth. May I suggest that the title deeds should, by way of compulsory indorsements, be converted into registers of equitable interests (*cf.* Lord Macnaghten's quotation from Sir E. Sugden's *Treatise on the Law of Property*) and the duty laid upon the trustees to act as registrars? By burdening them with this one duty, they would be relieved from many other duties and responsibilities.

JULIUS HIRSCHFELD.

VIII.—CURRENT NOTES ON INTERNATIONAL LAW.

Private International Law.

Jurisdiction over Torts to Foreign Immovables.

Our hope, expressed in *Current Notes* last year (No. CCLXXXIV., for May, 1892, p. 249), as to a final settlement of this difficult question has been fulfilled. The House of Lords in September last unanimously reversed the decision of the Court of Appeal in the case of *The Companhia de Mozambique and Others v. The British South Africa Co.* (see 10 *Times L.R.* p. 71). The Lord Chancellor's judgment was concurred in by all the other Lords present, *i.e.*, Lords Halsbury, Ashbourne, Watson, Macnaghten, and Morris. The grounds upon which the order of Wright, J., was restored, appear to have been that the trespass sued upon was a local and not a transitory cause of action; that the Courts have never on principle affected to deal with a local cause of action

relating solely to foreign land ; that the rules relating to Venue merely regulated the *manner* in which a right was to be enforced, and therefore that the abolition of such rules by the Judicature Acts in no way affected the question at issue. " The grounds upon which the Courts have hitherto " refused to exercise jurisdiction in actions of trespass to " lands situate abroad were substantial and not technical, " and the rules of procedure under the Judicature Acts " have not conferred a jurisdiction which did not exist " before."

Any criticism of this decision of the final Court of Appeal would be altogether captious. It is sufficiently satisfactory to have at length obtained an authoritative statement of the law on a point so long the subject of controversy.

JOHN M. GOVER.

[Other *Current Notes* are unavoidably held over.—ED.]

Quarterly Notes.

Land Transfer in Illinois and Ontario.

The subject of Land Transfer, to which our valued contributor, Prof. Rumsey, drew attention in his Article on *The New Land Transfer Bill* in the pages of this *Review* for May last, proves to be of interest at the present moment alike in the United States and in Canada.

From the City of the " World's Fair " we have received a valuable communication, which we propose to lay before our readers at the earliest possible moment, in the shape of

the *Report to the Governor of the State of Illinois* (Springfield, Ill., 1893) presented by the Commissioners appointed by the Legislature of that State to frame a Land Transfer Bill. The first portion of this document, for which we are indebted to the courtesy of Hon. Harvey B. Hurd, one of the Commissioners, who is at the same time Editor of the Revised Statutes of the State, consists of the *Report*, which is also what would be called on the Continent an *Exposé des Motifs*, while the second portion is the *Bill for an Act concerning Land Titles as recommended by the Commission*. We propose to print both these portions of the *Report* as substantive contributions to the Literature of Legislation on Land Transfer.

We are glad to find from a letter with which we were favoured by Mr. Hurd, that Prof. Rumsey's Article had attracted his attention, and that the Bill framed by the Illinois Commissioners proceeds on the same lines as those recommended by our valued contributor in excluding everything not directly relevant to the actual subject of Transfer of Title.

With regard to Canada, we find some difficulty in gathering what is the precise position indicated by the language of our old friend the *Canadian Law Times* (Toronto, Ont., Carswell Co., Limd.), when it speaks in a recent number (Vol. XIII., No. 11, for October, 1893) of the "game being up" for the "Torrens Title." We do not, however, understand this to refer to any recent change in the Law as to Land Transfer and the Registration of Titles, but only to certain aspects of what may be called the speculative side of the question, as variously affected by "booms" and depression. It would appear from some figures given in the number of the *Canadian Law Times* which we have cited, that there was a marked decrease in the dealings in Ontario Land Titles during 1892, which the Master of Titles (we presume, for Ontario) ascribes to the depression in real

estate which made "the majority of owners unwilling and probably unable to expend anything in respect of real property, which cannot be avoided." This explanation the *Canadian Law Times* considers only "partly satisfactory," and there appears to us to be something in it grammatically difficult of construction, as we should have supposed depression would have been more likely to affect expenses which could than those which could not be avoided. This is probably what the learned Master of Titles meant, and we hope we may be in possession of more accurate information shortly, as to the actual state of the Land Transfer Question in Ontario.

Reviews.

The Theory of Credit. By HENRY DUNNING MACLEOD, M.A., Barrister-at-Law. (2nd Ed.). Longmans. 1893.

We are very glad to find that our old friend, Mr. MacLeod, has so rapidly caught that portion of the British Public which is interested in Economics and Banking as to be already in the field with the first instalment of a Second Edition of his new work on the *Theory of Credit*; and we believe that the remainder may be looked for ere long.

The subject of the present work, although entitled as a *Theory*, is, in fact, eminently practical. For what can be of greater use to us in our everyday life than our credit? And our credit is only another aspect of our good name, our repute for being persons of substance, not men of straw. Moreover, it applies to States and Colonies just as much as it does to individuals. The credit of a State, when good, enables it to purchase money at a moderate rate. If its credit is low in the financial market, it must pay a high rate of interest for the

Loans which it wants to raise. We see these facts all around us, and we even take advantage of them in our transactions in the money market, and yet we often do not realise what is Credit, whether in the case of the State or of the individual. We have, to this extent, fallen much below the level of the great minds of Antiquity, whether among the Greek Philosophers or the Roman Jurists. They both knew what constituted credit and what was wealth. We have forgotten these things, and yet we fancy we are a great deal ahead of the Greeks and Romans, simply because we have a surface acquaintance with Telephones and Phonographs, and other such *fin de siècle* inventions. These things are all very well in their way, but when we find an Aristotle and a Demosthenes, a Justinian and an Ulpian, bringing their Philosophy, their Rhetoric, or their Jurisprudence to bear on the same point, and uniting in the expression of the truth that everything which is exchangeable is wealth, we may well stop a moment in the crusade which is so frequently waged in these days against wasting time, as it is called, over Classical Literature, the Literature of what we are pleased to miscall the "Dead Languages"—the fact being that both Latin and Greek are to this day spoken languages—and reconsider the question whether the Classical writers were the fools we have been apt somewhat too complacently to label them. Mr. MacLeod, at any rate, sees in the great writers of Antiquity our masters in Economical Science, and he proves his thesis by quoting their very striking words on the subject of Wealth and Credit. It is difficult for us, perhaps, to realise nowadays the force with which the words of a Philosopher such as Socrates, or an Orator and Rhetorician like Demosthenes, must have come home to their hearers. The slightest word that fell from such lips must have been treasured up, and handed down to posterity, with a feeling of reverent acceptance such as attaches to few men's utterances in our age. And this different condition of things no doubt explains the permanence of true conceptions of Economical Science in the world of Greek and Roman antiquity.

The Master was walking with his little band of followers, when one who has just returned from an Embassy meets him, and tells how but the other day he saw the richest man in Sicily. At once the Master takes up the point and raises a discussion on the nature of wealth, and by dint of first extracting from the speaker the ordinary view that to be wealthy meant to have much money, proceeds by an exhaustive review of the then

varieties of money, some of which would be of no use outside the country in which they circulated, to prove that "money is only wealth, because" (and therefore, of course, in so far as) "it is exchangeable. Where it is not exchangeable, where it cannot purchase other things, it is not wealth." Thus, for instance, we may remark, where cowries are the recognised medium of exchange, gold and silver would have no purchasing power, and consequently would not be wealth. The Dialogue, known as the *Eryxias*, from which Mr. MacLeod quotes the interesting passage which we have transcribed, though it may not be a genuine work of Socrates or of Plato, is yet unquestionably authentic as an exposition of the teaching of the Socratic School on the subject of wealth, and it is therefore rightly brought forward by Mr. MacLeod to reinforce his argument on the teaching of Antiquity. And what was taught thirteen hundred years ago was the Truth, whereas much which has been taught in more modern days has wandered very far from the Truth. We feel, therefore, that we owe sincere thanks to Mr. MacLeod for taking us to sit at the feet of the great men of Old, while at the same time we are equally obliged to him for all his modern instances of the living character of the true doctrine. Nothing seems to come amiss to Mr. MacLeod. At one moment it may be a Jurist, at another a Philosopher, whom he calls as a witness: at yet another moment he gives us a phrase living on the lips of the Scottish people in testimony to the perpetuation of true conceptions of Economics. Mathematics and Natural Philosophy also lend him valuable aid: without them, indeed, he could scarce have completed his task, and to their powerful aid he constantly acknowledges his indebtedness. The result of such varied appeals to the tastes and knowledge of his readers is to make Mr. MacLeod's books singularly interesting reading, for there is scarce a page in any of them where we have not the chance of finding some pet study of ours brought into play. The high value set upon his labours by the first Economists of the day on the Continent is well known. The value set upon them by serious students is strongly marked by the frequent demands for new editions. The labour entailed upon Mr. MacLeod by the preparation of these new editions must be very great; but seeing how transparent is his desire to advance the scientific study of Economics on Juridical principles, we cannot but hail each fresh instalment, and look forward with pleasure to the next.

The Judicial Practice of the Colony of the Cape of Good Hope and of South Africa generally, with Practical Forms. By C. H. VAN ZYL, Attorney-at-Law, Notary Public, and Conveyancer; Law Lecturer at the South African College, Cape Town. J. C. Juta & Co., Cape Town and Johannesburg. London: Stevens & Haynes and Sweet & Maxwell.

This goodly volume, at once of Theory and of Practice, is, as its author no doubt rightly believes, the first attempt on the part of any member of the Legal Profession in South Africa to give an account of the Theory and Practice prevailing in our South African Colonies. It is perhaps somewhat remarkable that so long a time should have elapsed since the days of Sir David Baird before the idea of such a treatise should have occurred to any of the class of English-speaking and English-reading practitioners who have grown up under the British rule and who never knew any other. Mr. Van Zyl is undoubtedly happy in his choice of a subject, and there can be no doubt of the opportuneness of his work. We are glad to be able to say that we think Mr. Van Zyl is no less happy in his general treatment of his subject than in his conception of the book which it seemed to him was wanted. That his treatise will fill what was clearly a want in Colonial Legal Literature we cannot doubt, nor can we doubt that it will be valuable alike to the Practitioner in Privy Council Appeals, and to the Legal Profession at the Cape. For the utility of Mr. Van Zyl's book to the student has been tested already, the idea of its publication having, in fact, to a great extent been suggested by the use of the germ of the book in his own classes and among his own clerks in the course of his ordinary routine as a Practitioner and Law Lecturer. Mr. Van Zyl's view of the best method of Legal Education, as combining instruction in the Theory and History of Juridical Science with Practice in the use of Forms, appears to be very sound, and he ought now to exercise a powerful influence over the rising generation of the Profession at the Cape by means of the work before us.

For ourselves, the mere sight of Mr. Van Zyl's volume rouses a keen regret that our valued friend, Sir Edward Creasy, who so often enriched our pages with his contributions during the very last days of his long and active career, is no longer among us to do full justice to the Roman-Dutch Law which he knew so well, and had administered so ably in Ceylon. We

feel ourselves quite unequal to fill Sir Edward's place, and yet, in drawing the attention of our readers to this work, we believe that we are carrying out what would have been his own wishes, in relation to one of his favourite branches of Legal study. Voet, and the other Dutch Commentators, became to us, indeed, household words through our acquaintance with Sir Edward Creasy, and we are well assured of the pleasure which he would have experienced in meeting them again, as they recur among the authorities cited by Mr. Van Zyl.

There is one grave feature in Mr. Van Zyl's book connected with the references to cases given by him, and that is the unaccountable lapse of years before cases appear to be reported at the Cape. Time after time are we met by such references as the following:—*Bernstein v. Levi & Lewis*, decided in Supreme Court, 1886, not yet reported (Van Zyl, *op. cit.*, p. 237); *De la Cornillière*, decided 1867, not yet reported (*u.s.*, p. 149). What can be the reason for this dilatoriness we do not profess to know; that it can be really excusable we feel at a loss to conceive, still less can we understand it. We draw attention to it in the hope that some means may speedily be taken for removing such a blot on South African reporting, and we shall welcome any news to the effect that cases whose importance is borne witness to by Mr. Van Zyl's use of them as authorities will not much longer have to be cited as "not yet reported." The Roman-Dutch Law prevailing in South Africa furnishes Mr. Van Zyl with some quaint incidents, as, for instance, the case of the man who was imprisoned for not marrying a certain damsel, and who, on discovering that he might languish in durance for the remainder of his natural life, thought it best to comply with the order of the Court, went to church under police escort, was duly married, and then left his astonished bride at the church door, a free man, but married in law, though not of his own good will. These are among the lighter touches in Mr. Van Zyl's Treatise. The book, as a whole, is a valuable addition to our Colonial Legal Text-books.

THE LAW MAGAZINE AND REVIEW.

No. CCXCI.—FEBRUARY, 1894.

I.—SOME RESULTS OF THE BENGAL TENANCY ACT.

THE world has recently been startled by the discovery of gigantic frauds which spread ruin and desolation in the midst of thrifty and industrious communities. The doings of the Liberator Society, the Panama Canal Company, and certain banks and Trust institutions, are still fresh in the memory of the public; and it may be remembered that, in some of the criminal transactions referred to, officials of high rank, members of the Legislature, and even members of the Government were found to have participated. The Government itself, however, not having been implicated in any instance, was able to exercise its powers for bringing the guilty to justice, and thereby restoring public confidence. But when an unfair scheme emanates from a Government, and that Government is vested with extraordinary Legislative and Judicial powers, which enable it to give the force of Law to its arbitrary determinations, and to sit in judgment over its own acts, the Constitutional forces of society, intended for the repression of wrong-doing, become paralysed or mis-directed; and national ruin and degradation are the inevitable results. Rebellion, in such circumstances, has almost invariably been the outcome of popular suffering and discontent; but rebellion against an autocratic Government, supported by a strong military force, must,

for a time, aggravate the public calamity, whatever reforms might ultimately ensue for the benefit of future generations.

These reflections are suggested by a Government land scheme, introduced into Bengal in 1885, and which threatens to compass the ruin of the wealthiest province in our Indian Empire. Fragmentary information on the subject has now and then appeared in telegrams from India; but a complete and just apprehension of the measure—of its objects and probable results—can be arrived at only through a retrospect into the administrative history of the province.

When the battle of Plassy, in 1757, wrested Bengal from its Mahomedan conquerors, the country had been greatly impoverished by the rapacity of the invaders; and agriculture, which constituted its chief industry, was depressed to a very low condition. The British, on their accession to power, imposed upon land a tax equal to tenths of its rental, and reserved the right of enhancing their assessment every ten years, wherever the land should meanwhile have been improved, either by clearances and extended cultivation or otherwise. It will at once be seen that no stronger discouragement could have been offered to industry and to the employment of capital in agricultural enterprise than the uncertainty thus introduced into the prospective demands of the Government; and this circumstance will, doubtless, in a great measure, account for the state of stagnation in which the country remained for nearly half a century after it came under British rule. The Governor-General wrote on the 18th September, 1783:—

“I may safely assert that one-third of the Company’s territory is now jungle inhabited only by wild beasts. Will a ten years’ lease induce any proprietor to clear that jungle and encourage ryots to come and cultivate his lands when, at the end of that lease, he must either submit to be taxed

ad libitum for the newly cultivated lands or lose all hopes of deriving any benefit from his labours, for which, perhaps, by that time, he will hardly be repaid ? ”

A proposal was then submitted by the Governor-General for fixing the land-tax in perpetuity, as a measure calculated to encourage agriculture, lead to the production and accumulation of national wealth, and inspire the people with loyalty and attachment to their new rulers. The proposal was carefully considered for several years, both in India and in England ; Mr. Pitt brought his powerful mind to bear on the subject ; and after an exhaustive debate in Parliament, the proposed measure was sanctioned in 1792, and the requisite declarations were promulgated in Bengal on the first day of the following year. Regulation I. contains the following assurance :—

“ The Governor-General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruit of their own good management and industry.”

The Preamble to Regulation II. gave the following pledges for the due performance of the compact then concluded between the British Government and the proprietors of land in Bengal :—

“ All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their ryots, have been cognizable in the Courts of Maal Adawlut or Revenue Courts. The Collectors of revenue preside in the Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the department of revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the

revenue officers are vested with these judicial powers. Exclusive of the objection arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security, therefore, must be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be submitted to the cognizance of Courts of judicature superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The Collectors of revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. No power will then exist in the country

by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected. Land must in consequence become the most desirable of all property, and the industry of the people will be directed towards those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State."

The land-tax under the Permanent Settlement having been maintained at the excessive rate which had previously been imposed—but could never be realised—the landowners were, at first, unable to collect sufficient amounts of rent for the due discharge of the Government demand; and those among them who possessed no other means but their lands, lost their estates under a clause in the new Regulations which rendered land liable to attachment and sale for arrears, when the revenue was not brought in on the day fixed for its discharge. Notwithstanding this unfortunate circumstance, the national prosperity looked for by the authors of the Permanent Settlement, was fully realised. Under the protection afforded by the Regulations of 1793, industry and capital converted the jungles of Bengal into an almost uninterrupted field of cultivation; and while the land-tax in the province has ever since been collected with a regularity unknown in the rest of British India, new sources of revenue far exceeding the land-tax itself have sprung from the wealth produced by agriculture under the operation of the Permanent Settlement.

"The Bengal of to-day offers a startling contrast to the Bengal of 1793; the wealth and prosperity of the country have marvellously increased—increased beyond precedent—under the Permanent Settlement. A great portion of this increase is due to the zemindari body as a whole, and they have been very active and powerful factors in the development of this prosperity." (See *Burdwan Commissioner's Report, Gazette of India*, 20th October, 1883.)

Meanwhile, the expenditure of the Government of India, under the irresponsible system of administration inaugurated in 1858, increased by nearly twenty millions a year—viz., from $34\frac{1}{4}$ millions in 1856-57 to $53\frac{1}{2}$ millions in 1869-70; and among the many projects formed for increasing the revenue, a proposal was entertained to confiscate the wealth produced under the Permanent Settlement Regulations, through additional burdens to be imposed on land, in violation of the pledge given in 1793. This dishonest proposal met, however, with strong opposition from the officials in India, through whose instrumentality it was to be executed; and when the Indian Secretary of State sought the support of his Council in the matter, he was told by one of its members: "We have no standing ground in India except brute force, if we forfeit our character for truth."

In short, the condemnation of the scheme by Anglo-Indian officials, both in India and in England, rendered an overt repudiation of public faith impracticable at the time.

But the unfair project was not abandoned; covert and tortuous ways were resorted to for its accomplishment; and the conspiracy (if it may so be called) was prosecuted with an ingenuity and a perseverance worthy of a better cause. The first step was to destroy the safeguards which had been provided for the due performance of the compact of 1793. To this end the independent Law Courts then established were undermined and weakened; and the condemned system of vesting Revenue officers with Judicial powers was revived, although its pernicious effects had been clearly demonstrated in the Preamble of Regulation II. The next step was to put such a construction on the compact of 1793 as would justify the Government in altering its conditions. After these preliminary steps, the object of the scheme—namely, increased revenue from permanently settled land—was to be gained through a

Legislative enactment which should (1st) deprive landowners of their power to enhance rents, (2nd) create middlemen entitled to fixity of rent, but empowered to rack-rent their sub-tenants the cultivators; and (3rd) perpetuate these conditions by annulling the validity of contracts, empowering the middlemen to sell their holdings with the privilege of fixed rents, and debarring landowners, who might purchase such holdings, from either extinguishing the right to the said privilege, or adding the land to their home farms. By these provisions the middlemen would be placed in a position to absorb the bulk of the profit yielded by the land, and the ultimate object of the scheme could be attained through taxation imposed upon them. Not being a party to the Permanent Settlement, these middlemen would not have the right which the landowners possess, of claiming exemption, under that compact, from further taxation on profits derived from land.

A pretext for initiating the necessary legislation was found in a long-standing complaint, that the defective state of the law subjected landowners to undue delays and expense in the recovery of rents. On pretence of remedying that evil, the Government introduced a Bill in 1878, with the following statement in justification of the step:—

“Notwithstanding the fact that in about 75 per cent. of the suits for arrears of rent the claim is really not contested, the landowners have often found themselves unable to recover their just dues, without submitting to a process which entails costs that may never be recovered, and delays that are frequently embarrassing and ruinous. . . . If they cannot recover their dues easily and effectually from their tenants they must under penalty pay the amount themselves—a position which the State is obviously bound to render as little burdensome as possible.”

This Bill was soon afterwards withdrawn, upon the plea that as the law on Rent seemed to require revision it was

advisable to deal with both subjects in one Bill. No one, however, had asked for a revision of the law on Rent, and the plea thus adduced for dropping a measure of acknowledged urgency naturally created misgivings in the public mind as to the real intentions of the Government. Regardless of this feeling the Government appointed a "Rent Commission," composed almost exclusively of its own officers, who, without examining the parties concerned, drafted a complicated Bill of some 230 sections, besides schedules and appendices, the nature of which was subsequently exposed in the reports of twenty-one Revenue and Judicial officers who were consulted on the subject. Of these voluminous Reports only small extracts from a few can find room here; but these will suffice to show the unprincipled character of the measure, and a striking contrast between the spirit of unfairness and duplicity which inspired the Bill, and the sound views of its official critics.

"If the definitions of tenure-holder and ryot are maintained, the conventional meaning of the word 'ryot,' the nearest equivalent of which is 'yeoman,' will disappear, as will indeed the class itself; for the inevitable tendency of the proposed law is to make *right-of-occupancy ryots*, in fact, as well as in name, middlemen. The definition of tenure-holder should be altered to signify exclusively a middleman between a proprietor and a ryot. You cannot alter the conventional meaning of words by Act of Parliament. Chapter VI. provides for the drawing up of a local table of rates of rents and produce. I believe that it will be practically impossible to draw up such tables. Chapter XI. introduces a state of things which the Preamble of Regulation II. of 1793 stated was found unsatisfactory." (J. P. Grant, District Judge of Hoogly.)

"Ever since 1793 we have allowed men to buy estates and tenures in the belief, fully justified by our action, that

no interference would take place, and it is not fair to those persons suddenly to uproot the conditions on the faith of which they have invested their money. The definition of ryot has purposely been left obscure. Sects. 14 and 15 turn an occupancy ryot into a tenure-holder. This is said to have been done for the convenience of the draftsman. It is a matter of no moment whether he finds an Act easy or difficult to draft; that should not occupy the mind of the legislator, whose attention should be directed solely to the justice and utility of the law. It is stated that the procedure under Chapter XI. has been invented with a view to removing from the Civil Courts the power of reversing the decisions of revenue officers. I do not see how this is to be reconciled with the Preamble of Regulation II. of 1793." (J. Beames, Commissioner, Burdwan Division.)

"As to the voidance of contracts, the proposed law appears to introduce a dangerous precedent. The law is held to override contracts entered into with deliberation, and this without any inquiry whether the contract was voluntary or not. Sect. 73 says that a contract, in a certain case, made in favour of a ryot, must be enforced, while sect. 50 protects him from contracts which are against him. Sect. 74 enforces a contract which is against a landowner, while sects. 87 and 90 repudiate contracts which are in his favour. These instances teach the ryots that there is no moral obligation in promises." (E. E. Lewis, Commissioner, Chittagong Division.)

"The survey and register under sect. 7 will, I believe, be a work of enormous difficulty. Every plot will be disputed, and there will be in effect a civil suit contested in every stage before the Survey officer, the Commissioner, the Board, and the Government. It seems to me to be more expedient to allow each case to be settled by the Courts on its own merits, in case of dispute, than to cause a widespread discord by sending a roving Commission about the

country to agitate questions in which the parties concerned are themselves quiescent. I have received some strong representations as to the delay which will be caused to the landlord by his not being allowed to eject any occupancy ryot for arrears of rent. This is one of the points where the landowner, asking for bread, has been given a stone." (R. Towers, District Judge, Tipperah.)

"I cannot consider the provisions of the Bill as fair to the landowners with reference to the rights which they have enjoyed for a century; and yet I am precluded from calling into question the principles upon which the Bill is founded. As to the abolition of freedom of contract, I altogether fail to see the justice of the provision. I find nothing of the kind in any of the Permanent Settlement Regulations. The ryot is to be allowed freedom in every respect, except when he enters into an agreement with his landlord. If this is not setting class against class and teaching the ryot to look upon the landlord as his natural enemy, words have no meaning. With regard to the ordinary ryots, the provisions of the Bill militate against all previous practice, by which a tenant-at-will was allowed to hold in accordance with agreement entered into between him and his landlord. I am not prepared to support those provisions which fix a maximum of rent to be demanded. As to the provisions for the recovery of rents, which were the beginning of the legislation which has found its outcome in the present Bill, I am afraid that the landlords will hardly be satisfied with the relief which has been given them. *On the principle on which this Bill is drawn,** the landowners could not expect further relief. I suspect, however, that they expected, and I am not prepared to say that they had not a good right to expect, very much more substantial relief, as the outcome of their application

* Mr. Monro may have underlined these words in order to convey the opinion that the object of the Bill was, not to relieve, but to despoil the owners of land.

for a summary method of realising rents." (J. Monro, Commissioner, Presidency Division.)

"I think the sub-letting power given to *Occupancy ryots* a doubtful and dangerous part of the Bill. A long string of rent-payers and receivers must be bad. As far as an *Occupancy ryot* is a rent receiver, he is one of the objectionable class of land-jobbers. The net result of the Bill will be the extinction of the present class of [cultivating] *Occupancy ryots*, and the transfer of their rights to money-lenders. We think the preparation of a table of rates impracticable. The Conference is unanimous in saying that the freedom of contract should not be withheld." (F. M. Halliday, Commissioner, Patna Division, in Conference.)

"The right of occupancy is for the protection of the cultivator; it seems inequitable, therefore, to allow a non-cultivator to be thrust on the proprietor as an *Occupancy ryot*. If a ryot is evicted from a holding in default of payment of rent, there is nothing in this sect. 129 to prevent his demanding compensation." (N. S. Alexander, Commissioner, Dacca Division.)

"It has been asserted that one of the objects of the present legislation is to afford facilities to the landlord for the recovery of his rent, whereas there can be but little doubt that the recovery of rent has been made more difficult than it previously was. Sect. 50, when enacted, will lead to a very general loss of right of *Occupancy* holdings by the present generation of ryots, whose holdings will be at once bought up by the money-lending classes, the ryots becoming rack-rented pauper-cottiers or landless labourers." (G. N. Barlow, Commissioner, Bhagulpore Division, in Conference.)

"The principle involved in sect. 47 seems almost a ludicrous way of making out an *Occupancy* right. There is to be a perfect transformation scene on a day yet to be

fixed. On that day villagers, who may be merely tenants-at-will and may never have held one piece of land for more than three days at a time, will suddenly become ryots with rights of Occupancy in the plot last held, all contracts to the contrary notwithstanding. This renders all contracts under Act VIII. of 1869 mere waste paper. I cannot think that circumstances justify such flagrant infringement of the landowners' rights. Sect. 50 bestows valuable privileges on the ryot; would it be too much to ask that one provision be added on behalf of the man at whose expense we are generous? viz., that the Occupancy right be liable to be revoked for non-payment of the 'fair and equitable rent' on the due date? If rents are no longer to be fixed by consent, but by a table of rates, how is such a table to be prepared? It pre-supposes a certain dead level in the out-turn of lands, as if improvement and industry were of no account." (C. A. Samuells, Collector of Bankura.)

"If this Bill is intended to protect ryots, I fail to see why it should allow sub-letting. A ryot ceases to be a ryot when he ceases to cultivate, and when he sub-lets, he becomes the most oppressive of landlords, a petty middle-man." (H. Mosley, Collector of Moorshedabad.)

"Constant changes in legislation are greatly to be deprecated. In the present instance I do not think that any such necessity has arisen." (E. J. Barton, Collector of Jessore.)

"The Bill proposes to effect a violent revolution in the ownership of landed property, affecting the interests of above fifty-five millions of people. Such important changes, affecting detrimentally the rights and interests of a large and important class, should only be made on very strong grounds; such as, for instance, the grounds advanced by Mr. Gladstone when introducing a somewhat similar measure in Ireland in 1870. The result in that case might well make thinking men pause before introducing it into

another country, even if the circumstances under which the Irish measure was applied existed here. No special or strong grounds, political or other, exist in the present case, nor have any been asserted in support of the present Bill. In 1877, the Lieutenant-Governor thought special legislation was necessary to enable the zemindars to recover their rents. Matters have in no way changed since then. There has been no general feeling of discontent among the ryots. I am sure that all the Government officers will agree in this, and in thinking that the ryots of Bengal are, as a body, in a contented, prosperous condition ; nor will it be denied that there has been no general request on the part of the ryots for such legislation as is now proposed. It is clear, then, that the present measure is proposed, not because it is necessary, but because, in the opinion of the Government, the land system of the Bill is preferable to the existing one. It seems to me that the passing of such a Bill would not be justified by the circumstances, and that even if there were no other objections it would not be right to pass it. But there are other and, in my opinion, serious objections to the Bill. First, it is an infringement of the rights guaranteed by the Permanent Settlement. I do not forget that the Settlement allows Government to interfere for the welfare and protection of the ryot. But if it had been intended that such interference should have amounted to the destruction of the proprietary rights then conferred, such rights would never have been conferred, and I request reference to paragraph 11 of this letter, as it can scarcely be alleged that interference is necessary in the slightest degree for the protection of the ryots. Next, we have for 90 years treated the zemindars as real proprietors, making them discharge the duties of proprietors in regard to matters connected with police, crime, furnishing supplies to troops on the march, and, above all, the collection of public demands. Is it fair or just to deprive them now of the most important rights of a pro-

prietor?" (Lord H. Ulick Browne, Commissioner of the Rajshahye and Cooch Behar Division.)

The undisguised opposition of these officials (whose advancement in the Service so greatly depended on the good-will of the Government) testifies to the indignation which they must have felt at being expected to co-operate in a scheme of injustice and oppression. Lord Ulick Browne was charged at the time by the Lieutenant-Governor, in a despatch addressed to the Government of India, with having, when consulting his subordinates on the Tenancy Bill, made comments which amounted to "prejudging the issues which they were called to consider." But the Lieutenant-Governor had laid himself open to a similar charge in paragraphs 5, 6, 7, and 8 of his Circular calling on the district or superior officers for their opinions on the same Bill; and the omission of those paragraphs in the copy published in the official *Gazette* would tend to show that His Honour was not unconscious of their exceptional character.

When the Bill was submitted for the Secretary of State's sanction, the following objection was raised by the Council of India, and stated in Lord Hartington's despatch of 17th August, 1882:—

"Your proposal in the first place annuls the distinction deeply rooted in the feelings and custom of the people between the resident and permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the ryots their ancient position and rights, appears to me anomalous and undesirable. In the next place, it abandons a principle on which the Statute law has been based for nearly a quarter of a century, and which was adopted in 1859 by the Legislature on rational and intelligible grounds."

The Bill was also submitted for the opinion of the High Court of Bengal, and the Chief Justice's Minute of

6th September, 1882, of which the following is an extract, exposes its character from a legal point of view :—

“I find that some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the Permanent Settlement ; and it has been further argued that in the Settlement itself the Government has expressly reserved such a power of interference. For my own part, I consider the argument quite superfluous. I take it to be clear that any Government, *in case of real emergency*, has a right, so far as it is necessary, to interfere with vested rights to whomsoever they may belong, and howsoever they may have been created. But then I take it to be equally clear that, *without some such actual necessity*, no Government is justified in interfering with the vested interests of any class of its subjects ; more especially when those interests have been created and defined, after due consideration, by the State’s own legislative enactments.

“The true question for our present purpose is whether there does or does not exist at the present time any such necessity as justifies the Government in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the Bill. For myself I see no such necessity, and I am bound to say that, amongst the many complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind.

“The deprivation to which I allude, was never, so far as I can ascertain, even suggested by the ryots. It was proposed for the first time by certain members of the Rent Commission ; and it is supported, as I understand, not upon the ground of actual necessity, but because, in the opinion of those gentlemen, the ryots were, or ought to

have been, in a better position some ninety years ago than they are now; and that it is desirable, in the interests of the State, to place them in that position."

Sir Richard Garth, after fully discussing the other provisions of the proposed Law, concluded his Minute in the following terms :—

"For the present my task is done. I trust that, with some of my countrymen at any rate, the humble but earnest effort that I have made to protect the landlords in Bengal from what appears to me nothing short of impending ruin, may find some support and sympathy. I trust that the landlords themselves may be awakened in time to their own danger; and I hope and pray that the policy of confiscation—which has borne, and is bearing still such terrible fruit in Ireland—may be averted by the blessing of God from our Indian possessions."

These condemnatory opinions, expressed by some of the highest authorities, led to the Bill being kept back for upwards of two years. Meanwhile the ryots perceived that the proposed legislation, while it deprived the landowners of their proprietary rights, also destroyed the protection which the ryots enjoyed against the undue enhancement of their rents. The subject was then carefully discussed by ryots all over the country, and numerous petitions came from them, earnestly praying the Government that the Bill might not be passed. The prayer was unheeded, but the matter continued to be kept in view, though the Bill was seemingly dormant.

In 1885, the change of Ministry, and the increased excitement over the Irish Home Rule question, which engrossed public attention at home, seemed to offer a favourable opportunity to the Government for carrying the Bengal Tenancy Bill through its final stages, and the Legislative Council was accordingly summoned for the purpose. On that occasion a non-official member, the

Maharaja of Darbhanga, after once more pointing to the evil tendencies of the measure, concluded his speech in the following words :—

“I have at any rate the satisfaction of feeling that I have acted as the true friend of my country and of the Government in warning you of the political dangers which, I believe, underlie the proposed legislation.”

Another non-official member, Baboo Pearymohun Mookerjee, said :—

“I deem it my duty to entreat your Lordship and this Honourable Council to pause before passing this Bill. It has been observed by a high authority, Jeremy Bentham, that ‘the legislator is not the master of the disposition of the human heart ; he is only its interpreter and its minister. The goodness of the laws depends on their conformity to general expectation. The legislator ought to be well acquainted with the progress of that expectation in order to act in concert with it.’ Allow me, my Lord, to ask: Has the Bengal Tenancy Bill satisfied the expectations of either the landlords or the ryots ? The resolutions passed at the meetings held in different parts of these provinces, the numerous memorials which have been submitted to your Lordship by landlords and ryots alike, and the public opinion which has found expression in every section of the native and Anglo-Indian press, give an emphatic answer to the query. The landlords stand aghast at the dreadful vista of unmerited loss which the measure threatens them with. The ryots loudly express their consternation at the operation of a law said to have been conceived for their benefit, but which they firmly believe will make their position much worse than it is at present. I appreciate the desire of the member in charge of the Bill that there should be a finality at some stage of these discussions ; but the passing of a measure which is disliked by all classes is not likely to allay the agitation which discussions regarding

it have given rise to. Let us not cry peace where there is no peace. In questions of such magnitude, complexity, and importance, where every word and sentence we seek to clothe with the authority of the law may be fraught with the gravest consequences to millions of unrepresented subjects of Her Gracious Majesty, it can never be unwise to pause and take a forecast of the future. A question which I beg your lordship and this Council to consider is whether it is desirable to pass without further inquiry and deliberation a measure which, it has been publicly said, would shake the confidence of the people in the faith of the British nation, and which would set brooding over their wrongs a large and important section of the community who are noted for their loyalty and devotion to the British Crown."

The Viceroy's speech, which ended the debate, sounds like a derision or an insult to human intellect in its description of a measure which violates every dictate of justice and humanity, and aims simply at spoliation. His Excellency said :—

" I believe that the Bill is a translation and reproduction, in the language of the day, of the spirit and essence of Lord Cornwallis's Settlement ; that it is in harmony with his intention, and is conceived in the same beneficent and generous spirit which actuated the framers of the Regulations of 1793."

It seems incredible that these words could have been uttered with any feeling of sincerity. But what right have we to expect a sincere expression of opinion from any official member of the Indian Legislative Council, when we know that the members of that body are not free agents, but are bound, irrespective of their personal feelings and opinions, to act in obedience to the instructions transmitted by the India Office? Has not the Indian Secretary of State, in his despatch of 24th November, 1870,

distinctly intimated to the Governor-General of India in Council, that "the British Government must hold in its hands the power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it?" Under these conditions the Bengal Tenancy Bill could not have been passed without the sanction of the Secretary of State for India; and the responsibility of the measure must, therefore, attach solely to that Cabinet Minister. But is that Cabinet Minister himself a free agent as regards the administration of India? Is he at liberty to sanction a measure calculated to benefit the Indian people, or to abstain from a course injurious to them, when his colleagues in the Cabinet are opposed to the former or insist on his adopting the latter? Can he, moreover, reasonably be expected to withstand the influence of the British Constituencies on whose support his existence as a Minister, and the strength and safety of the Cabinet of which he is a member entirely depend? If these questions are to be answered in the negative, how are the Indian people, upon whom an irresponsible system of government has been imposed, to be protected either from a dishonest Executive, or from the exigencies of British Constituencies, when these are opposed to the interests of India?

Considering the constitution of the Indian Legislature, it will be easily understood that the Bengal Tenancy Bill, notwithstanding its flagrantly iniquitous character, was passed without the least hesitation by the standing official majority of the Council; and although eight years have since elapsed the Government have been unable, as yet, completely to carry out its provisions. The ryots, as a body, having shewn disinclination to accept the insidious privileges offered to them, the Government are preparing to execute forcibly the Cadastral Survey which is to enable their officers to construct a record-of-rights on the arbitrary lines laid down in

the Act, and to draw up the table of rates on which rents are to be based. Meanwhile landed property has been considerably depreciated under the Confiscatory Clauses of the measure; and the increased difficulty it has introduced in the recovery of rents, has placed a large number of proprietors in the impossibility of satisfying the Revenue demand on the due date. Sales for arrears have, in consequence, increased ever since the Bill was introduced. In 1882 and 1883 the estates and shares of estates attached by the Revenue officers amounted to 9,735 and 10,789 respectively; and the Calcutta *Englishman* of 1st December, 1893, states, in reviewing the latest Administration Report of Bengal:—

“Nearly 17,000 estates and shares of estates became liable for sale for non-payment of the Government demand last year. Forty-three estates were bought by the Government for the nominal sum of 54 rupees.”

Thus, one of the noteworthy results of the legislation, which was avowedly introduced for the assistance of landowners in the recovery of rent, has been to deprive thousands of them of their estates, and to destroy the confidence of the people in the good faith and good intentions of their rulers. The ultimate effect of the *Bengal Tenancy Act*, when fully enforced, must be to create strife and litigation, to extinguish the spirit of peaceful industry so marvellously evoked by the wise legislation of 1793, and to drive an impoverished people to lawless modes of subsistence.

J. DACOSTA.

II.—THE JURISDICTION TO ENTERTAIN ACTIONS FOR TRESPASS TO LANDS SITUATED ABROAD.

THE point which was decided in the United States in the case of *Livingstone v. Jefferson* (1 Brockenburgh, 203) has been recently, under an altered state of the law, the subject of Judicial decision in the superior tribunals and the ultimate Court of Appeal in England.

In the case of *Livingstone v. Jefferson* the question was whether the United States Circuit Court for Virginia could take cognizance of a trespass to lands situate beyond the district as against a resident of Virginia, and, in the course of his Judgment, Chief Justice Marshall (with the Hon. St. George Tucker) said :—" It is admitted that on a contract respecting lands an action is sustainable wherever the defendant may be found. Yet in such a case every difficulty may occur which presents itself in an action of trespass. An investigation of title may become necessary, a question of boundary may arise, and a survey may be necessary to the full merits of the cause. Yet these difficulties have not prevailed against the jurisdiction of the Court. They are countervailed, and more than countervailed, by the opposing consideration, that if the action be disallowed, the injured party may have a clear right without a remedy, in a case where a person who has done the wrong, and who ought to make the compensation, is within the jurisdiction of the Court. That this consideration should lose its influence where the action pursues a thing not in reach of the Court is of inevitable necessity ; but for the loss of its influence where the remedy is against the person, and is within the power of the Court, I have not yet discerned a reason other than a technical one which can satisfy my judgment." The

Chief Justice, accordingly, ruled in this case that in an action for trespass to land the venue was local, and that the action must be brought in the State where the land lay. In *Whittaker v. Forbes* (L.R. 1 C.P.D. 51), which was an action commenced in England previously to the coming into operation of the Judicature Act abolishing (subject to slight exceptions) local venues, but tried after that Act, for arrears of rent-charge on lands in Australia, Lord Bramwell, then Mr. Baron Bramwell, expressed his approval of the Judgment of Marshall, C.J., in *Livingstone v. Jefferson* (at p. 53).

Before entering upon the consideration of the Municipal Law relative to this subject, it is desirable to refer to the International aspect of the question. According to a recent writer in the *Law Journal*, Vol. XXVIII., p. 670, "The International responsibility of the British Government for acts of the chartered companies is complete. Every act of administration by the companies or their agents giving rise for cause for complaint by any European Power, or by any Power in fact independent, is an act for which the British Government which granted the charter is internationally responsible. The acts of the company were acts of State, and, as Lord Thurlow puts it, '*Ex tali facto non oritur actio.*'" *The Nabob of Arcot v. The East India Company* (3 Brown's Reports C.C. 291; 4 Brown's C.C. 180; 2 Ves. Jun. 56), in which case the Court of Chancery refused to entertain a suit arising out of transactions of State between sovereign powers, though the defendants were subjects of the English Crown. This International liability is referred to by Wright, J., in delivering the Judgment of the Queen's Bench Divisional Court in the recent actions brought against the British South Africa Company in the following terms (66 L.T. Rep. N.S. 782):—"The charter of the defendant company and its treaties with the native chiefs are not before the Court, but if, as in the case of the East India

Company, the defendants are authorised by their charter to make treaties of a political character with native chiefs and to acquire sovereign rights within the territories of those chiefs, and if the defendants have made such treaties and acquired such rights, and if the defendants have done the acts complained of in their own character as a sovereign power under such a charter or treaties, then their own acts may have been of the character of acts of State, and not examinable in any municipal court, according to the principles recognised by Lord Thurlow and Chief Baron Eyre in the case of the *Nabob of Arcot* (*sup.*). If that were made out by the defendants the plaintiffs would not be without remedy, but the remedy would not be legal, but diplomatic, and redress might be sought by Portugal on behalf of the plaintiffs from the Crown of England." The maxim *respondeat superior* seems to apply, as pointed out in *Dobree v. Napier* (2 N.C. 781; 1 Sm. L.C. 714, ed. 7).

To pass from the International side of the subject to the question as affected by Private International and Municipal Law, it may be stated that the former received exhaustive consideration founded upon Story's *Conflict of Laws* in the Judgment of Lord Esher, M.R. (reported 40 W.R. pp. 652, 653), the latter in those of Lord Justice Fry (*ib.*, pp. 655, 656), and the Lord Chancellor (L.R. [1893] A.C. 617, 618, 619). It has also, it may be mentioned, recently received Judicial consideration in Ireland (where the rules as to venue appear not to have received alteration similar to that which has taken place in England) in the case of *McConchy v. Madden* (28 L. Rep. Ir. Com. Law Div. 338). The Master of the Rolls, after pointing out (40 W.R. 652) that with regard to acts done within the territory of a nation all are agreed that such nation has, without more, jurisdiction to determine the resulting rights growing out of those acts; and noticing the general jurisdiction as to personal property, the jurisdiction being prior to any rule of venue made with regard to

the method of exercising the jurisdiction, proceeds to the consideration of the question whether a similar jurisdiction has been given by inter-municipal law, in respect of real or immovable property. "The law of the *situs*," his Lordship is reported to have said (40 W.R. 653), "governs all rights in and to land. One right to land is the right that a stranger shall not enter upon it against the consent of the owner. In sects. 551, 552, Story further states the opinions of the foreign jurists; and finally in sect. 554, he states what in his opinion is the law of England—the common law of England. 'It will be perceived that in many respects the doctrine laid down coincides with that of the common law. It has been already stated that by the common law, personal actions, being transitory, may be brought in any place where the party defendant can be found; that real actions must be brought in the *forum rei sitæ*, and that mixed actions are properly referable to the same jurisdiction. Among the latter are actions for trespasses and injuries to real property which are deemed local, so that they will not lie elsewhere than in the place *rei sitæ*'" (sect. 554). Again (at p. 653) "the municipal rules of procedure are not to be considered until the question of jurisdiction is determined." "If by express legislation the Courts are directed to exercise jurisdiction, the Courts must obey. If there is a proper inference to the same effect the result is the same" (40 W.R. 652). With respect to the division of actions into those of a local and transitory nature, and the cognate but now, in England, historical rules as to venue, Lord Justice Fry, referring to the growth of the jurisdiction of the Common Law Courts, formerly limited by competing jurisdictions, within the realm, and laying down that it would be hardly wrong to assert that the Courts of this country have jurisdiction in every case in which they ought to have jurisdiction, is reported to have said (40 W.R. 655, commented on, L.R.

[1893] A.C. 633, 634): "So long as all actions were local, it is obvious that no action, whether it related to matters personal or to immovable property, in which the cause of action arose beyond the jurisdiction of some county could possibly be tried in any Court in England. When the distinction arose between local and transitory actions, and the further step was taken of allowing transitory actions where the cause arose out of England, and such actions only to be tried within the jurisdiction, trespass *quare clausum fregit* was held to be a local action, and consequently such an action in respect of land abroad could never be tried in any Court of the nation." With regard to the development of the law which determined the venue or place of trial of issues of fact, it appears that when the practice of drawing the jury from the particular town, parish, or hamlet where the fact in issue took place—that is from amongst those who were supposed to be cognisant of the circumstances—ceased, and they came to be drawn from the body of the county generally, and to be bound to determine the issues judicially after hearing witnesses, the law began to discriminate between cases in which the truth of the venue was material, and those in which it was not so. This gave rise to the distinction between local and transitory actions, that is, between those in which the facts relied on as the foundation of the plaintiff's case have no necessary connection with a particular locality and those in which there is such a connection. In the latter class of actions, the plaintiff was bound to lay the venue truly; in the former, he might lay it in any county he pleased. Local matters arising out of the realm might be tried by a jury from the venue in the action with a *scilicet* of that venue (L.R. [1893] A.C. 632). "The distinction between local and transitory actions depended on the nature of the matters involved, and not on the place at which the trial had to take place. It was not called a

local action because the venue was local, or a transitory action because the venue might be laid in any county, but the venue was local or transitory according as the action was local or transitory." *Per* Lord Herschell, L.C. (L.R. [1893] A.C., at p. 619).

To pass to the consideration of the recent cases in the English Courts. In that of *The Companhia de Moçambique v. The British South Africa Company* (66 L.T. Rep. N.S. 782; in *dom. proc.* L.R. [1893] A.C. 617) the plaintiffs alleged themselves to be interested in lands in Africa of two kinds—the one lands situated within territories acquired by Portugal and granted by that State to the plaintiffs, the other by grants from native chiefs; they relied on title as regards both these kinds of land, and they also, and alternatively, relied on the fact of possession; they alleged acts of trespass committed on these lands, and they further alleged that there was no competent tribunal having jurisdiction to adjudicate on their claims in the country where the acts complained of were committed. The relief which the plaintiffs had sought, so far as it related in any way to the land, may conveniently be divided into four parts (*per* Fry, L.J., 40 W.R. 655):—Firstly, a declaration of their title; secondly, an injunction to support and give effect to that declaration; thirdly, damages for trespass to the land; and fourthly, an injunction to prevent further trespass. The most important question in the Queen's Bench Divisional Court was, whether the Court could entertain jurisdiction to make a declaration of title to foreign lands. This point was abandoned before, or not pressed upon, the Court of Appeal, where the question was, could the Court, now that there is, by R.S.C., Ord. 36, r. 1, no local venue for the trial of any action, entertain jurisdiction in an action brought against a person resident in England for damages for trespass to land situate out of England in a place where

there is no Court of competent jurisdiction? In the allied case of *De Sousa v. The British South Africa Company* (66 L.T. Rep. N.S. 782), the plaintiff, the Governor of the Portuguese provinces in South Africa, alleged wrongful acts of trespass on the part of the defendants similar to those in the above action, and claimed damages and an injunction: the defence set up being that De Sousa was wrongfully upholding the claim of the Portuguese Companhia in the first mentioned action. If it had not been treated as subsidiary to the first action, De Sousa's action would probably have been successful. (*Scott v. Seymour*, 10 W.R. 739; *The Halley*, 16 W.R. 284; L.R. 2 P.C. 93.)

Before entering upon an examination of the state of the authorities upon the questions involved in these cases, it may be well to state what constituted the cardinal difference in the law under which they were decided and that in existence at the time when kindred points had been before the Courts. In accordance with the recommendation of the Judicature Commissioners, by R.S.C., Ord. 36, r. 1, "There shall be no local venue for the trial of any action, except where otherwise provided by statute."

The plaintiffs in the recent cases alleged that jurisdiction to entertain actions similar in character to those which they brought had been inherent in the English Courts, but were unable to point to any unquestioned instance of its exercise; this disability arose, it was on their behalf asserted, from what has been described as the "technical fetter" of venue, the nature of which has been above shortly sketched. In support of this view the Chancery cases, of which *Penn v. Lord Baltimore* (1 Ves. Sen., 444) is a leading instance, were cited. In that case, heard in 1750, a Bill had been filed for specific performance and execution of articles entered into in England with respect to the boundaries of two provinces in America, the

defendant being within the jurisdiction, and the Court granted a decree for specific performance (Belt's Supplement to Ves. Sen., 206):—Lord Hardwicke saying, "As to the Court's not enforcing the execution of their Judgment, if they could not at all I agree that it would be vain to make a decree, and that the Court cannot enforce their own decree *in rem* in the present case. But that is not an objection to making a decree in the cause; for the strict primary decree in this Court, as a Court of Equity is *in personam*, long before it was settled whether this Court could issue to put into possession in a suit of lands in England, which was first begun and settled in the time of James I., but ever since done by injunction or writ of *assistant* to the sheriff; but the Court cannot to this day, as to lands in Ireland or the plantations. . . . In the case of *Lord Anglesey*, of land lying in Ireland, I decreed for distinguishing and settling the parts of the estate, though impossible to enforce that decree *in rem*; but the party being in England, I could enforce it by process of contempt *in personam*, and sequestration, which is the proper jurisdiction of this Court." The same principle that the Court of Chancery acts upon the conscience of the person living here was applied by Sir R. P. Arden, M.R., in *Lord Cranston v. Johnston* (3 Ves. 170, 5 Ves. 127), where a purchase at an under value by a judgment creditor of his debtor's real estate in the West Indies was set aside, a trust affecting foreign lands will be enforced, *Earl of Kildare v. Eustace* (1 Vern. 419, 422) and Judgment given for foreclosure of a mortgage upon lands situated abroad, *Paget v. Ede*, L.R. 18 Eq. 118, *cf. Lord Arglasse v. Muschamp*, *Lord Kildare v. Eustace* (1 Vern. 75, 135, 419); *Jackson v. Petrie* (10 Ves. 164); *Tulloch v. Hartley* (1 Y. & C. 114); *Jenney v. Mackintosh* (55 L.T. Rep. N.S. 733). The effect of the leading Common Law case of *Mostyn v. Fabrigas* (1 Cowp. 161, 1 Sm. L.C., 9th ed., p. 665) is thus stated by

Lopes, L.J. (40 W.R. 658) : " This was an action for trespass to the person, but there are expressions and *dicta* of Lord Mansfield which make it abundantly clear that he thought the difficulty with regard to local actions arose not from any want of jurisdiction, but from restrictions with regard to locality " (1 Sm. L.C., pp. 686-688, 7th ed.). *Whitaker v. Forbes* (*ubi sup.*), was an action for arrears of a rent-charge in Australia prior to the commencement of the Judicature Act, and it was held that the venue in such action was local, and that it therefore could not be maintained in this country. Lord Cairns made the following observations (L.R. 1 C.P.D., at p. 52), which clearly show that his Lordship anticipated that the point would arise which the learned Judges in the recent cases were called upon to decide. " Recent legislation provides that for the future there should be no distinction between local and judicial actions as regards venue. It may be that hereafter such an action as this would be maintainable, but it is not necessary to express an opinion on the point."

Two cases, on the other hand, seem almost decisory in the negative of the question of jurisdiction. The first is the well-known decision upon Constitutional Law, *Skinner v. The East India Company*, anno 1667 (reported 6 State Trials, 710), and referred to in the following terms by the Master of the Rolls in the course of his Judgment (40 W.R. 653) : " The order of the House of Lords was ' that it be referred to all the Judges to consider of Skinner's petition, and to report to the House whether the petitioner was relievable on the matters therein mentioned in law or equity, and if so in what manner ; upon the several parts of the complaints of the said petition : ' the Judges answered ' that the matters touching the taking away the petitioner's ship and goods, and assaulting of his person notwithstanding the same were done beyond the seas, might

be determined upon by His Majesty's ordinary courts at Westminster; and as to the dispossessing him of his house and island, that he was not relievable in any ordinary Court of law.' It must be observed that the question distinctly referred to the courts of equity as well as of law. The answer, therefore, is that the petitioner was not relievable in any Court either of law or equity. The answer could not be given in reliance on there being no local venue in the sense of there being no place of trial, because that difficulty had no application to courts of equity; it must be founded on the conclusion that for other reasons neither Court had jurisdiction. That opinion of the Judges has never been questioned. It agrees with the distinction I have shown to have been taken by all the foreign jurists. It is an agreement by the English Judges with that distinction, a distinction as to jurisdiction and not as to procedure." In the second case,—*Doulson v. Matthews* (4 Term Rep. 503),—an action for trespass for entering the plaintiff's house in Canada and expelling him was held by the Court of Queen's Bench not triable in this country, because the cause of action stated in the pleadings was local. Again, in 1763, in the leading case of *Pike v. Hoare* (2 Eden, 182), the Court of Chancery declined to direct an issue to try the validity of a will of real estate lying in the American Colonies, Lord Northington saying: "I build my opinion materially on the fact of the lands lying in Pennsylvania, for a will of lands lying in any of the Colonies is not triable in Westminster Hall (*cf. per Willes, J., L.R. 2 H.L. 259-60*). *Cf. Shelling v. Farmer* (1 Str. 646). A Court of Equity refused in *Norris v. Chambres* (3 D.F. & J. 583, 29 Beav. 246) to declare a lien upon foreign land, although the parties were domiciled here (*cf. re Hawthorne, L.R. 23 Ch. D. 743*). And in *Cookney v. Anderson* (1 D.J. & S. 365) it was held that the title to land is to be determined not merely according to the laws of the country where the land is situate,

but by the Courts of that country. In *the M. Moxham* (34 L.T. Rep. N.S. 557), an action for damages done by a British vessel to a pier in Spain was admitted for trial in England upon the ground that the parties had entered into an agreement to submit themselves to the jurisdiction only. The cases of actions for trespass to land referred to in *Mostyn v. Fabrigas* (*ubi sup.*) were regarded as having been overruled by *Doulson v. Matthews* (*sup.*). The argument that the Judicature rules had extended the jurisdiction was answered by the decisions in which it has been laid down, that those rules did not confer rights, but related only to procedure. *Lyell v. Kennedy* (L.R. 20 Ch. D. 484); *Brittain v. Rossitir*, *ib.* (11 Q.B.D. 123, 129).

Thus the point has been settled against the exercise of the jurisdiction by the English Courts. If there is no law where the right of action is alleged to have arisen, no right has been violated. If there has been a violation of a right, English Courts might grant a remedy *in rem*, but, according to the law, they have no jurisdiction to do so.

WM. PERCY PAIN.

III.—THE INDIAN PRINCES: THEIR STATUS AND TREATIES.

I.

OUR INDIAN PROTECTORATE (London and New York: Longmans. 1893) is the taking title of a comprehensive, suggestive, and well-intentioned work by Mr. C. Lewis Tupper, of the Punjab division of the Indian Civil Service, who, during his furlough at home in 1891-2, with laudable zeal devoted much of his time to the reading of various papers of considerable merit before the East India Association, the London Chamber of Commerce, and other public bodies, in which he expounded various aspects of Indian polity. The present volume may be briefly characterised as an attempt to describe what the author has defined as "Indian Political Law," that is, the relations of the British Indian Government, as the Paramount Power in India, with the Princes and Chiefs in that great peninsula. This term and domain of Political Science, Mr. Tupper seeks to differentiate from International Law and its principles. This motive of the work is sketched out with much ability in the opening chapter, where, *inter alia*, the author remarks that "International Law stands to Indian Political Law very much in the relation of the Roman Law to the Law of Nations"—a proposition which it is manifest will at once challenge scrutiny, and invite to closer controversy. Yet he makes the significant admission that "International Law has some application to the Indian States"; and he adds, "as between the suzerain and the feudatories, there are in India, as in Europe, legations, negotiations, treaties, and other agreements." Again, "one of the chief marks of Indian sovereignty is the exercise of certain powers of government without the

delegation of any authority to exercise them under any British enactment."

Just so ; and it may be at once observed that in these unavoidable acknowledgments of the sovereignty—"divisible" (as Mr. Tupper has it) but real sovereignty—in the Indian States, there is an issue raised that crops up in every chapter of the book ; and which, we will not say vitiates, but overloads the general bearing of the author's whole argument. This is more obvious in the phrase, adopted in the preface, and which dominates the application of Mr. Tupper's theory all through—"the Indian Feudatory States." This term must be held as implying a fatal misconception, one which—though of late years loosely used in a popular sense—can have no historical or scientific weight in any serious review of the political status of the indigenous Principalities, Powers, and Dominions of India. In the present brief notice, it is not practicable to go into detailed juridical argument ; but for our immediate purpose this elementary definition may serve—"the Feudal System is the name generally given to the system of *land tenure* and social arrangements which prevailed in Europe during the period commonly known as the Middle Ages." This is sufficient to indicate how totally foreign is the term "Feudatory States" when sought to be applied as between the political sovereignties of India and the British Indian Government, however much the terms "Imperial" or "Paramount" may be insisted upon in respect of the latter. Surely it is too late in the day to revive the sophistries with which Lord Dalhousie and his apologists sought, in course of their disastrous career of political spoliation, to confound States with "estates," or their heedless and perverse use of "escheat," "lapse," and the like feudal terms. To anticipate somewhat, we may here observe that Mr. Tupper in too many passages appears as an apologist of Lord Dalhousie ; though his own better juridical training

induces him to imply many judicious and prudent reserves; which, by the way, were conspicuously absent from the recent audacious effort in the "Rulers of India" series, to palter with the verdict that history has pronounced on the Dalhousian "Reign of Terror."

II.

That our author has come under the influence of the recent morbid recrudescence of the Dalhousian tradition is evident, amongst other passages, from this estimate of that politically unscrupulous pro-consul's quality: he says: "Lord Dalhousie was not the man to be led by a sinister or selfish argument. His arguments were his slaves and not his masters; and [though] in the exigency of prospective self-defence he may have condescended to use some which his own judgment in reality despised." Now if the negatives be omitted from this passage it would not be easy, in the same compass, to express a more just condemnation of Lord Dalhousie's (in the political sense) "sinister and selfish" crusade against Indian Sovereignities and States, our Treaties and Alliances with which were, and are our chief title to Imperial sway in India. No whitewashing, no *ex post facto* pleas of expediency, can obliterate this sound conclusion as to the true historical and political relation between the British Government and the Indian States. Nor is the ethical and juridical weight of that truth anywise impaired merely because circumstances permitted Lord Dalhousie and his confederates to trample on those Treaties and extinguish several of those sovereign States. As to Mr. Tupper's apology for the sophisms and specious pleas used by Lord Dalhousie in support of his revolutionary and destructive policy,—which lame apology, as cited above, we have helped out by suggesting "though" for "and,"—that these sophisms had really become his "masters," has been proved up to the hilt by a

writer who has gone far deeper into the modern political history of India than this rising Punjab Civilian seems ever likely to penetrate. This estimate of the Marquis of Dalhousie, which we proceed to quote, will serve not only as a set-off to Mr. Tupper's, but, once for all, it meets by anticipation, the whole series of eulogies on that misguided statesman which are scattered through the whole volume, and so largely lessen its value as a political treatise. Our version runs thus :—

“ Lord Dalhousie was a clever, energetic public functionary, with considerable power of expression. . . . In a secondary position, he might have been a valuable public servant. . . . But he was deficient in more solid qualities. He had no originality, and no foresight. He never penetrated causes, nor calculated consequences. . . . In the State papers of almost every Governor-General since Warren Hastings, we obtain now and then a glimpse of some great principles of government—something that betokens an insight into human character, into the feelings and interests of the strange people whose ancient civilisation and complicated forms of society must be so largely modified by the extension of British supremacy. Nothing of the sort can be found in the political minutes of Lord Dalhousie. You may search them in vain for a single new idea, for a single striking thought, for one word of generous regret or genial hope; for anything but the peculiar dialectics, at once peremptory and tortuous, by which he made out his case for annexation, and the cold-hearted formal arrangements by which his plan was to be carried out. He abolished a Kingdom as coolly and with as little compunction as he abolished a Board. He was much admired at Calcutta during the last three years of his administration; but it was simply a proof of those imperfect sympathies and that total blindness to everything but some immediate showy result, which are wholly irreconcilable with any pretension to statesmanship.” And, again, “No man who took a statesmanlike and original view of Indian affairs in any department was ever admitted to the confidence of Lord Dalhousie, or ever obtained the slightest influence over him. He was incapable of understanding them. . . . He silently declined consulting with Sir William Sleeman (in regard to Oude). He shelved Sir

Henry Lawrence. The few eminent men in the Indian Services who deprecated the policy of annexation before 1851 had all been removed by their [previous] sphere of duty from the petty forms and details of a regular Collectorate, or the routine of an established office. In the fields of Indian diplomacy, and in the management of newly-acquired and unsettled tracts of country, they had been made to deal with States instead of districts, and had been brought face to face with natives of all classes, who were neither their suitors nor their subordinates [that is, they had obtained by experience that true Imperial insight, which it was not given to the Whig emissary to evolve out of his own consciousness]. These were not the men to find favour in Lord Dalhousie's eyes. He did not want originality nor liberality. He wanted unquestioning acquiescence."

Here, it may be remarked in passing, one of the typical men of that quality and period was Sir George Russell Clerk, who resigned his post as Governor of Bombay rather than carry out the Dalhousian decree for the destruction of the premier Mahratta State of Sattara. He afterwards became Lord Canning's trusty counsellor in his noble conciliatory policy, and to him is attributed the drafting of that truly imperial State paper, the Adoption Despatch of 1858.

The above extracts are from *Retrospects and Prospects of Indian Policy* (Trübner. 1868). It may serve to connect and supersede the many woefully weak places in the historical portions of Mr. Tupper's arguments, if we ask the attention of impartial politicians and jurists to the passages in that irrefutable work, wherein Lord Dalhousie's forensic pleas in the cases of Sattara, Nagpur, Oude, the Punjab itself, and Mysore are severally scrutinised, exposed, and effectually disposed of in the daylight of Treaties and official documents of the period. As to the last named Principality, happily saved from the hands of the spoiler, see again pp. 36-8 of the *Mysore Reversion* (London: Trübner. 1868), where, by parallel and implication, the whole tenour of Mr. Tupper's

apologies for the Dalhousian policy is refuted and made of none effect.

III.

Let us now revert to our author's opening chapter, wherein, with much skill, he faces the question as to the source and origin of his "Indian Political Law." It is here where his modest sub-title applies, "An Introduction to the study of the Relations between the British Government and its Indian Feudatories." As to the latter essentially erroneous term, that has already been criticised. In course of his preliminary approach (pp. 5-13) towards tracing out a basis for this newly-named branch of political jurisprudence, Mr. Tupper advances many observations that may prove suggestive for students of that science: as, for instance, his criticism of Austin's doctrine of "the indivisibility of sovereignty." When, however, our author comes down to definitions of origin (p. 10), it will be seen what thin ice he has to tread upon; but his dictum is concise enough, thus: "The source of this law, which has supreme importance, is, without doubt, *Usage*—the ACTUAL PRACTICE of the Indian Government in its dealings with its *feudatories*." (The capitals and italics are ours, for cause that will appear.) In citing the eminent persons who, we are told, have contributed to "the rapid and systematic development of Indian Political Law during the last thirty years," he includes Sir Henry Maine, Sir J. Fitzjames Stephen, Lord Hobhouse, with other Law Members of Council; Sir Charles Aitchison, Sir Mortimer Durand (with whom Mr. Tupper was associated in the Kabul Mission), and least, perhaps, to be expected in such a company, Sir West Ridgway! Then as to the authoritative documents out of which the terms and principles of Indian Political Law are said to have been evolved, these are described as "a variety of minutes, notes, and

compilations of a confidential character prepared by competent authorities in the course of their official duties." It is acknowledged that these occult sources of this very modern system of jurisprudence "are not, of course, open to the public," but "are well-known in Indian official circles." It will be observed there is not a word here about our Treaties with Indian Princes, by which, as juridical and historical bases alike, our Empire in India must stand or fall—though reference is made elsewhere to Sir Charles Aitchison's Collection of Treaties. Thus it is evident that the documentary bases of this brand new system of political law have to be taken largely on trust. What students and professors can make of such shadowy material is a problem that would baffle a theosophist to solve; so that, in the mean time, the general public and earnest enquirers are perforce obliged to accept Mr. Tupper's "introductory study" as the present *avatar* of the new juridical dispensation.

IV.

This discouraging account of the sources of Indian Political Law forces one to the conclusion that all we have to rely upon is "usage" and "the actual practice of the Indian Government." There we seem to have struck bottom, at last; but it only seems so. For when legists ask us to accept their own procedure and practice in their other character of executive politicians, as bases and authority for the substantive law they propound, we find ourselves landed by a very short circle in a position which is subversive of all law. But, even apart from this *reductio ad absurdum*, if Mr. Tupper could afford good evidence of his really knowing what *has* been the "usage" and "actual practice" in dealing with Indian States, their rulers, and their rights, we should have something to go upon. Unfortunately this evidence is lacking. On the contrary,

our author, in far too many instances to permit of enumeration, shews that his own knowledge of this asserted historical basis of Indian Political Law is superficial, partial, and fatally prejudiced by his own assumptions and *ex post facto* theories. To take here but one instance of this, his "Story of Mysore" (pp. 118-123), on which the "actual practice" of the Indian Government is summed up in the two lines: "At length in 1829, an extensive insurrection broke out, and British troops had to be employed to suppress it." This sort of slurring over the facts may be good enough for Marshman's *History*, and other popular school books; but it shows that Mr. Tupper knows worse than nothing of that and similar episodes, and, by implication, renders nearly all that he founds thereon as to "usage" and "actual practice" utterly untrustworthy. Our author is not aware, and it appears has given himself no care to ascertain that the disorders in Mysore, which led to all the painful and tangled events that followed, were directly due to the unspeakable perversity of the then Governor of Madras, the Hon. Sir Stephen Lushington; and, though less directly, also to the gross neglect of the Supreme Government to administer the provisions of the Treaty under which the Maharajah had been restored to his hereditary dominion after the overthrow of the usurper, Tipu Sultan. The honoured name of Lord William Bentinck has been cited as justifying the supersession of the Maharajah; but his hand had been forced by the lawless proceedings of the Madras Government, and by its Resident who succeeded in worrying out of his position the Commissioner, General Briggs, a man who did really understand the political law of India long before this new version of it was invented. Communications in those days were slow; but before Lord William Bentinck left India, he became well acquainted with the facts that had been kept back by the local authorities, and he deeply

regretted the error that had been committed in the supersession of the Maharajah's government. When the "actual practice" is claimed as a basis of law, such episodes should be really studied as these in Mysore, where, under the administration of the Madras and Indian Governments, one Resident's butler, Ramaswamy, and another's *sheristidar*, Chowrappa, were not only permitted, but supported in tyrannical and rapacious proceedings that resulted in that "extensive insurrection" which Mr. Tupper, in common with the man-in-the-street, ignorantly attributes to the native Prince. Before another edition of *The Protectorate* is called for, the author should devote his next furlough to fresh and real study, so as to find out for himself in how many instances our Protectorate has been grossly abused, that is scornfully disregarded, and "law" shamelessly defied. If he will look up General Briggs' correspondence with Bentinck and Mountstuart Elphinstone—much of it comprised in that officer's *Memoir* (London: Chatto and Windus. 1885)—he will find that his fanciful and popular "Story of Mysore" will have to be re-written, as also many of his superficial accounts of the Indian Government's "actual practice" in the cases of Sattara, Nagpore, Oude, and the rest.

Before proceeding to deal with the first of these cases, Mr. Tupper makes the significant admission that "towards the close of Lord Dalhousie's administration, there seems to have been a not unnatural impression that the native States of India would be gradually but quickly eaten away by the pressure of encircling British dominion." He also mentions, rather by the way—and not, as it was, one of the obvious and ominous warnings of the inevitable tendencies of that revolutionary policy—that some of the Princes, including certain Rajput Chiefs, who dared to speak, though, as it were, in confidential whispers, "told British political officers that they thought

the annexation of Sattara a case of might against right, and expressed the hope, not unmingled with dread, that the Rajput families (that is the indigenous rulers generally) might be saved from like disgrace and disaster; . . . the usual question was what crime had the Raja of Sattara committed that his country should be seized by the Company?" But this striking historical comment that goes to the very root of the infatuated subversive policy which is in question, seems to have little weight with our author. He proceeds to set out at its specious best (pp. 93-4) Lord Dalhousie's sinister plea, backed by the eager desire to serve our revenue and territorial interests, and based on the monstrous assumption—which runs all through that history of political chicane—that the right (that is the duty) of the Paramount Power to *regulate* and confirm succession by adoption, carries with it also the right (seeing there is the power) to *disallow* such succession, thereby destroying kingdoms and States, the continuity of which had been safeguarded, not only by our own Treaties, but also by immemorial custom, and the highest sanctions of Hindu religion. And a similar pernicious doctrine was applied to the Mussulman right and custom in the selection of heirs and successors.

With similar tenderness and misplaced tolerance, our author treats the sophisms of the destructive satrap, as applied to the ruthless confiscation of Nagpur and the Bhonsla family, which included by far the larger portion of their private property. As Mr. Tupper coolly remarks, "The strongest part of Lord Dalhousie's case for the annexation of Nagpur, was that which depended on the interests of India"—that is, the "Minute is devoted" to the naked, sordid plea of "the desirability of annexing Nagpur in the interests of England [not India], because the great field of supply of the best and cheapest cotton is in the valley of Berar and in Nagpur, and the adjoining

provinces." It is only fair to our author to remark that while he too easily accepts as historical apologies, Lord Dalhousie's "idols of the theatre"—those sophisms that had blinded in him the moral-political sense, such as "continuity of our territories," our "financial exigencies," the "general interests of India," and the "prosperity of its inhabitants"—Mr. Tupper, in the clearer atmosphere of to-day, gives us the assurance that if any Indian States were now exposed to such designs as those which Lord Dalhousie was permitted to carry out in 1849-1854, no such destructive result could follow in the present day. He says, "There is not one of those arguments from expediency which would now hold good as a ground for annexation;" and, what is more to the purpose on behalf of political equity and conservative Imperial policy, he adds: "Even the question of right, if it should be raised, which is highly improbable, would be debated in a different way and an entirely different spirit." We should think so, indeed; and for this belated virtue let us be thankful. But to irresponsible power, fresh temptations are never wanting; and with the example before us of the doings of the Simla Political Department in Kashmir, in High Asia, and Beluchistan, also the sinister proceedings of the British Residency at Hyderabad, there is still not less, but more, need for vigilance on the part of the few who cherish firm convictions of political equity and Imperial responsibility.

To the ruling case (and indelible disgrace) of Sattara, we can only refer very briefly. In this, as in all other examples, Mr. Tupper fails to free himself from the seductive influence of Departmental decisions, and those "final orders," which, however plausible, are never more than the popular statement of the plaintiff's case, after which the defence, if heard at all, has been thrust into the background. He says (p. 89): "A perusal of the record [as to Sattara] cannot fail to bring home to an impartial mind the conviction

. . . . that annexation was the best course to adopt in the interests of the people, matters of political and fiscal advantages standing by themselves, would never have induced them to agree to it," whereas, all the world knows, though our author does not see it, that these "advantages," from Mr. J. P. Willoughby's characteristic revenue-officer's pleas on to Lord Dalhousie's specious arguments, really sordid though unctuously phrased in his pretentious periods, were the only operative pleas for that typical political iniquity. Elsewhere Mr. Tupper refers to the final despatch of the [majority of the] Court of Directors; but he ought to know this was *Hamlet* without the Prince of Denmark. Where are the Minutes of Dissent? These comprise some of the clearest, most forcible, and noblest utterances of the best men of the Honourable Company; they give the lie to fate, and to the malign influence of the Board of Control, whose chosen instrument Lord Dalhousie was. We can, in this instance, concisely supply our author's omission and lack of historical knowledge. Let the student and the jurist refer to Colebrooke's *Memoir of Mountstuart Elphinstone* (London: Quaritch. 1861), and read what is there said on this striking incident. Colebrooke, as an intimate friend and an eye-witness, says: "I do not remember ever to have seen Mr. Elphinstone so shocked as he was at this proceeding; the treatment of the Sattara sovereignty as a *jaghire*, over which we had claims of feudal superiority, he regarded as a monstrous one; but any injustice done to this family was subordinate to the alarm which he felt at the dangerous principles which were advanced, affecting every Sovereign State in India, and which were put forward both in India and at home." Here we have the conviction of matured wisdom which cuts away the root of that "feudal" fallacy that runs through half the arguments of *Our Indian Protectorate*, and which must forbid its being accepted as of any permanent authority. We submit that, in any

subsequent editions of the book that may be called for, Mr. Tupper should include in the appendices—which are much required—the two letters of Elphinstone of May 13th, 1849, and February 13th, 1850, in which that eminent man sets out his clear and comprehensive convictions on this essential branch of British Indian polity, though with, his usual, almost undue moderation of expression.

With regard to the large question of Oude, which Mr. Tupper has treated at great length and with much skill, we can only speak of it too briefly, and mainly in order to invite attention to the work in which, in regard to this case, not only are the origin and bearing of the Treaties and juridical questions treated from a broader standpoint, but with more accurate historical knowledge, and in clearer political light. That is in Chapter V. of *Retrospects and Prospects of Indian Policy*. (London: Trübner. 1868.) The story is an exceedingly intricate one, as our author himself shews; but it was rendered all the more so by the peculiarly ingenious sophistries which Lord Dalhousie wove into it, and around it. As Mr. Tupper remarks, “the chief interest of the annexation of Oude to the students of Indian Political Law lies in the discussions of the Indian Government which set forth the justification of the measure.” Here we may say, in passing, that he does not seem to have paid equal attention to the Parliamentary *Oude Papers* of 1856 and 1858, which include the observations of two or three prominent English statesmen of the time, and in other ways afford material for a broader and fuller review of the whole subject. Our author spends pages in describing the misrule that prevailed again and again in that “Garden of India”; but he fails to see how this was largely due to the neglect of the Government of India to exercise the ample powers it had, and was under obligation by the Treaties to apply for the reform of the administration. This Sir William Sleeman, Sir Henry Lawrence, and others of the old school

of the Company's Political Officers (such as General John Briggs) had again and again urged on the Governor-General in Council. He does quote the weighty opinion of Sir Barnes Peacock, though without perceiving how large a part of the controversy that eminent lawyer's remarks covered, when he "considered that we should obtain a sufficient guarantee for future good government, without deposing the king or compelling him to abdicate, and to vest the whole of his territories (and sovereignty) in the British Government." See also the similar arguments of General Low (p. 77) and Sir J. P. Grant (p. 79). And why was not this conservative and constructive course taken, which was one in accordance with the real and true political law of India? The answer to this is given with irresistible force in the irrefutable work we have already cited, and from which it will be sufficient to give a few quotations that cover a wide field of argument, and include the vital considerations that govern the whole case:—"Down to the despatch from the Governor-General to the Court of Directors (August 22nd, 1885), the only plan for the reform of Oude which had been recommended in India and approved by the Home authorities, was that of *temporary management*, with a view to the ultimate restoration of purely native rule. During Lord Dalhousie's term of office the ideas of the Supreme Government underwent a complete change." In answer to the Duke of Argyll's ingenious apology for his friend's affected hesitation, it is pointed out that "Lord Dalhousie did not scruple to recommend a course which, according to his own expectations, would have led to an immediate insurrection, would have endangered the King's life, and would have given up the great city of Lucknow to pillage." (*Oude Papers*, 1856.) Again, "Whatever may be said in the published papers as to 'admonitions' and 'remonstrances,' it is a positive fact that no plan for improving the administration of Oude was ever countenanced. Some extensive

reforms prepared in concert by the native Minister and the British Resident at Lucknow were absolutely discouraged and defeated by the Calcutta Foreign Office. The Bengal Civilian did not want to give assistance, they wanted to take possession. . . . Oude, therefore, having been spared and neglected for twenty years, was, at last, absorbed by Lord Dalhousie, on the pretext of disorders in its government, which were all removable, and which might have been easily remedied without annexation, if there had been any wish to preserve the separate existence of that friendly and faithful State. But there was no such wish." In support of this view as to the true functions of a Protectorate, see Sleeman's *Oude*, Vol. I., where will be found the substance of a plan of reformation and effective administration through a native Board of Regency which that capable officer laid before the Government in 1849. He continued these appeals to the better mind of the Indian Government down to 1854, when he came to the conclusion expressed in a letter to one of his friends: "Lord Dalhousie and I have different views, I fear. If he wishes anything that I do not think right and honest, I resign, and leave it to be done by others. . . . We have no right to annex or confiscate Oude; we have a right under the Treaty of 1837 to take the management of it, but not to appropriate its revenues to ourselves." By way of comment on this we quote again from the *Retrospects*: "No doubt Lord Dalhousie had persuaded himself that the temporary management of Oude was not attainable, and if attainable would not be effectual for permanent reform. With the fixed purpose of absolute acquisition before him, he was very easily persuaded, and attacked the plan of temporary management with arguments and illustrations of transparent futility." In contrast to this destructive and aggrandising doctrine, there is the beneficent obligation that rests on a Protectorate under

which, as regards Oude, may be cited the principles cherished by Lord William Bentinck, Lord Hardinge, Sir Henry Lawrence, and Sir William Sleeman, who were "opposed to annexation, but bent on reform." Sir Henry Lawrence, in an article in the *Calcutta Review* about 1845, described his remedy for the misgovernment of Oude, and in a private letter to J. W. Kaye gave this homely comment thereon : " We have no right to rob a man because he spends his money badly, or even because he illtreats his peasantry. We may protect and help the latter without putting the rents into our own pockets "—or, let us add, stealing the territories of the State. This last remark may seem to suggest one more quotation we will give from the *Retrospects*, and which may serve to cover and answer most of Mr. Tupper's philanthropic, though unconstitutional doctrine of expediency, which he pleads in condonation of the destruction or supersession of the Protected, but Treaty-founded (limited) sovereign Indian States : " The incompetence, misconduct or contumacy of a reigning Prince, though it may justify his deposition, does not annul a Treaty, or annihilate the State. A revolutionary crisis may justly be made an occasion for reform, but not, as Lord Dalhousie planned it, a pretext for rapacity. The reign of a bad Prince may afford a fair opportunity for improving, but not for appropriating a State." Mr. Tupper, in concluding the chapter on Oude, quotes Mr. R. C. Irwin to the following effect :—" There can be no doubt that Lord Dalhousie and the Members of his Council, and General Outram were one and all firmly convinced that by *assuming the administration* of Oude, they were acting in the interests of humanity, and conferring a great blessing on millions of people " (the italics are ours). But what has been said or quoted already will shew this was what they did *not* do. Instead of " assuming the administration " through the people of Oude, and under its

own constitution, they disregarded our Treaty obligations to that end; they violently abolished its monarchy, and destroyed its existence as a State. Lord Dalhousie thereby laid the train for a terrible explosion and conflagration, of which some scarred and battered relics still remain in and about the city of Lucknow, as warnings to future statesmen who may be tempted to depart from the ancient paths of political rectitude, and the sacred obligations of Imperial responsibility.

V.

Coming to more recent times and instances, it is something to be thankful for that Mr. Tupper, quoting the Queen-Empress' Proclamation at Delhi, on New Year's Day, 1877, loyally acknowledges, as part of Indian political law, that it is "not upon the conquest of weaker States, or the annexation of neighbouring territory, that Her Majesty relies for the development of her Indian Empire." But in spite of, nay, even under cover of the new version of Indian political law, we may find "the old foe with a new face." It is not quite a happy illustration of the new principles of political law when Mr. Tupper cites "the late restoration of power to the Maharajah of Kashmir." Surely he cannot be quite ignorant of the disgraceful proceedings, the chicanery and forgery, under the very nose of our Resident and the Simla Political Department, in sequence to, if not in pursuance of which, the Maharajah was superseded, and our Treaty with that kingdom flagrantly disregarded; or that, under cover of the vaunted "restoration," the troops and resources of that kingdom are, at this very day, being utilised for "the conquest of weaker States, and the annexation of neighbouring territories . . . for the development of Her Majesty's Indian Empire"—not *in* India, indeed, but in High Asia. Are these Kashmir transactions, as "the actual practice" of the Indian Government, to be

adduced presently as one of the sources of Indian political law?

With many of Mr. Tupper's conclusions as to constituent portions of the present situation in India, we may be inclined to agree, though not in following the circuitous route by which he has arrived at them. His book reads smoothly; it will soothe some hesitating minds, and will conduce to the British public's good conceit of itself; but as a scheme of "law" it is crude, and its political history is in many passages similar to a mirage. The high road of real history comprises many crooked paths; it has steep ascents and sharp declivities, amidst which lie deep ruts and muddy tracks; but our author, surveying the scene from his own safe plateau, necessarily overlooks these rugged and miry ways. Hence he seems to have said to himself, "Go to; let us paint the landscape as it now appears, where every prospect pleases, and only Indian Princes are, or have been, vile."

AN ENGLISHMAN.

IV.—EXTERRITORIALITY.

THE always important question of Extra-territoriality, or Exterritoriality, has of late drawn forth an interesting volume from the pen of a former Editor of the *Law Magazine and Review* Quarterly Digest of All Reported Cases, Mr. F. T. Piggott (*Exterritoriality: The Law relating to Consular Jurisdiction and to Residence in Oriental Countries*. By F. T. PIGGOTT, M.A., LL.M. W. Clowes & Sons, Lim. 1892), who left us for Japan, where he was called upon to fulfil the honourable function of Legal Adviser to the Japanese Cabinet.

It has also produced a valuable Article by Sir Travers Twiss, in our contemporary, the *Revue de Droit International*

(Brussels, 1893, Art. *La Jurisdiction Consulaire dans les pays de l'Orient et spécialement au Japon*), which was elicited by a previous Article in the *Revue* by M. Paternostro, the substance of which had formed a Lecture given by the learned author at Tokio in the course of 1890.

The recent change of front, which has, to a considerable extent, manifested itself in Japan with regard to Europeans, arising, as it has, as far as a visible cause can be alleged for it, from so common and so unavoidably recurrent a cause as a Maritime collision, gives fresh interest to a subject which yet in itself requires, or ought to require, no such temporary fillip to arouse our interest in it. But the fact being unquestionable, as we take it, that the simple circumstance of a collision between a British and a Japanese vessel has caused great friction in the relations between Great Britain and Japan, it seems well to devote such space as we are able to spare at the present moment to some consideration, however brief and imperfect, of the question of Exterritoriality.

Here we are met, *in limine*, by a point which Mr. Piggott takes, and which strikes us as very subtle, viz., the distinction which he would fain draw between Extraterritoriality and Exterritoriality; and we must ask ourselves the question, do we admit that such a distinction exists? For ourselves, we must say we do not think that it does exist, but we do not rest solely upon that conviction, because we think that even if we allowed it for argument's sake, it would still be a distinction too subtle for actual practice. It appears to us that the full, correct epithet, so to speak, of this principle or doctrine, whichever people may prefer to call it, of the Law of Nations, is Extraterritoriality, and that Exterritoriality is simply a short, and, therefore, more convenient form, which has the further advantage of being practically the only form used in French, a language which may still claim a large place as the

language of Diplomacy. Whenever, therefore, we may ourselves use the epithet Exterritoriality, we must be understood to use it in the ordinary sense, as equivalent to Extra-territoriality, viz., a status or position, or an extension of Municipal Law, *Extra territorium*. Thus the status of an Ambassador is a status by which he is considered as being Extra-territorial, *i.e.*, outside the territory in which his residence is locally situated, and the action of the Queen's Orders in Council and of Courts constituted thereunder in Japan or in any Foreign country is an Extra-territorial action of such Orders or Courts. In each case, the local sovereign admits the exception, or it would subsist in theory only and not in practice.

Mr. Piggott enquires whether Allegiance has anything to do with Exterritoriality, and comes to the conclusion that Obedience to Acts of Parliament has been substituted for Allegiance. As a matter of fact, the term Allegiance, like the terms Suzerainty and Suzerain, is a term of Feudal Law, and they all consequently chiefly have an Archaic character at the present day, and are all equally generally misunderstood, and sometimes ludicrously misapplied. Thus on the occasion of a proclamation of British Suzerainty over certain portions of South Africa, outside the limits of the Cape Colony, it was openly asserted by many, no doubt in good faith, that the Queen had thereby acknowledged the superiority to herself of certain Dutch Boers and African savages. This was, it need not be said here, a perfectly ludicrous misreading of the term Suzerainty, but it served to shew how utterly erroneous were the prevalent notions in our day of almost any terms of Feudal Law which remain in use. The perversion of facts involved in the notion of Suzerainty which we have just mentioned is not by any means exceptional, it is simply a good specimen of its kind. We do not mention these points, of course, with a view to Mr. Piggott, but with a view to that

British Public which is at once so wanting in knowledge and so full of self-confidence, but which is often able to do much mischief by its influence over the members of the House of Commons.

Mr. Piggott draws some ingenious inferences of possible action under the Foreign Jurisdiction Act, as when he suggests (p. 30) that it would be quite within the bounds of possibility for Jurisdiction under that Act to be established in a European or civilised country, and pictures to us British Consuls in France empowered thereunder to act as Arbitrators in disputes between, say, two Englishmen in Paris. This is perhaps a hypothetically possible case, but scarcely probable. The position of Her Majesty's Secretaries of State in the matter of the Foreign Jurisdiction Act is somewhat peculiar. They certainly appear to be constituted by sect. 4 a sort of Court of Final Appeal on all questions arising "as to the existence or extent of any jurisdiction of Her Majesty in a foreign country." It is probable that although the expression a "Secretary of State" is general, and vests identical powers in the entire body of such Secretaries, questions on the Foreign Jurisdiction Act would be submitted to Her Majesty's Secretary of State for Foreign Affairs. Mr. Piggott thinks it "by no means probable that it was intended to turn the Secretary of State into a judge," but we cannot say that we feel equally certain on this point. The position of the Home Secretary is just such a position, in fact, in the grave question of the remission or confirmation of a capital sentence, and it is scarcely less Judicial in other matters which are frequently referred to him.

Mr. Piggott, while treating the alleged "omnipotence of Parliament" with what he considers to be "becoming respect," is nevertheless, in fact, not much more persuaded of its reality than we are. For it would seem that of the two statements of this supposed doctrine cited by him

from Sir James Stephen's *History of the Criminal Law in England* (II., p. 37), and from Lord Halsbury's Judgment in *MacLeod v. Attorney-General for New South Wales* (L.R. [1891] App. Cas. 455), he prefers the latter, as we do ourselves.

The case supposed by Sir James Stephen is, purposely no doubt, very forcible as well as highly improbable, and this latter circumstance may afford the true explanation of its use by Sir James. The distinguished historian of our Criminal Law supposes that the British Parliament might pass an Act to the effect that the whole Criminal law of England should apply to the conduct of Frenchmen in France, and that our Central Criminal Court should have Jurisdiction over all offences against that law committed in France. And such a law, Sir James Stephen says, the Judges could not refuse to put in force. But he does not say that it would authorise the English Judges to go on Circuit in France and hold Assizes and gaol deliveries in that country. It is, therefore, obvious, as Mr. Piggott remarks, that, in effect, such a law comes to being merely equivalent to saying that if persons do certain things abroad, and afterwards come to this country, they will be punished for what they have done. Still, that would be a rather lame and impotent conclusion to so solemn a farce as that of Sir James Stephen's hypothetical Act. And yet that an Act, equally foolish and impossible, is scarcely beyond the limits of possibility, seems proved by the very case in which Lord Halsbury delivered the Judgment from which Mr. Piggott cites with satisfaction the clear and logical utterance that "Except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever," *i.e.*, as Mr. Piggott marginally annotates, no "right of legislation," but also, we think, carrying the sense of "no power to enforce such legislation, if made." The Colony of New South Wales had, apparently,

purported to legislate for every person, of whatsoever nationality, who should commit bigamy; but as Lord Halsbury, C., said, "The Colony can have no such jurisdiction," and equally, we should say, with Lord Halsbury, the Mother Country can have no such jurisdiction. The fact of a British Colonial Legislature having legislated so utterly *ultra vires* certainly seems to lend a colour of greater possibility than might otherwise be thought within reasonable bounds to the hypothesis of Sir James Stephen. But, possible or not, such a hypothesis appears to us to be a *reductio ad absurdum* of the favourite theory of the Omnipotence of Parliament.

In regard to the application of the Fugitive Offenders Act to Oriental countries, Mr. Piggott has some criticisms to offer which seem to us to have a wider applicability than that which is specially within the purview of his book. The Act, he says (p. 102), is really "Extradition applied to our Colonial Empire." This brings up the whole intricate question of Extradition, to various aspects of which frequent reference has been made in this *Review*.

Now, as Mr. Piggott rightly remarks (p. 103), a foreign country which has granted Exterritorial privileges does not thereby become a Colony [*viz.*, of the United Kingdom]. This is undoubtedly true, and probably no one would be found to deny the proposition. And again, Mr. Piggott as rightly continues, "it seems to me impossible to claim by usage the surrender of a sovereign right of which no mention is made in the Treaty. And a sovereign right which is possessed by a civilised and uncivilised, a Christian and Mahomedan State alike, is to protect all who come within its borders. There is a right to refuse to surrender, as well as a right to surrender, criminals to their own Government, and this right reposes in the Sovereign."

This is in close accordance with the view of Extradition, and of that which Mr. Piggott prefers to describe as "what

is sometimes called the 'right of asylum,' " which we have long maintained in the pages of this *Review*, and we are therefore the more pleased to find it in the pages of our old contributor's interesting volume. Incidentally Mr. Piggott opens up various points worthy of further consideration by him in a future edition, such as the question of International Bankruptcy, which comes to the surface in regard to the great difficulty which would be experienced, say in Japan, from the absence of any general recognition of a complete discharge in Bankruptcy. So with regard to Copyright and Company Law, in both of which questions of considerable difficulty are suggested by Mr. Piggott's acquaintance with the practical aspect of such matters in Oriental countries, under the Foreign Jurisdiction Act. Some of these, such as the "simple case of more than twenty persons at Shanghai, forming an Association to trade in Shanghai alone, and registering under the laws of Hong Kong," may well be said to lie at present along the "unbeaten tracks of our Company Law."

The Article in the *Revue de Droit International* on the same subject as that of Mr. Piggott's book was called forth, as we have remarked, by a Lecture delivered at Tokio by Professor Alessandro Paternostro, one of the European Councillors of the Japanese Ministry of Justice, which was subsequently published in the *Revue*.

In his utterances at Tokio, Professor Paternostro, while asserting the right of Japan to denounce the Treaties under which Consular Jurisdiction exists, yet advised his Japanese hearers against this extreme measure, and we cannot but think that in this advice recent events have shewn that Professor Paternostro was wise.

It has been frequently urged that the rapid progress of Japan in Western culture and Western modes of Government fully warranted her in claiming exemption from the tutelage in which, so to speak, the Treaties and Consular Courts

thereunder hold her. But it has often occurred to us that rapid progress is not always sound. There is a wise saw in Italy to the effect *chi va piano va sano*, and we fear that the pace at which Japan has assimilated, or appeared to assimilate, Western manners and customs has been far too rapid for soundness. It is one thing to draft a Constitution and another to carry it out in daily life. It is one thing to have a House of Lords and a House of Commons, and another to have a working acquaintance with Constitutional Government. Sir Travers Twiss, while admitting the beautiful simplicity of the denunciation of the Treaties as a mode of cutting the Japanese Gordian knot, suggests that there is a previous question concerning the nature of Treaties and their obligation.

What is a Treaty in International Law? enquires Sir Travers. To answer this question he takes up Prof. Paternostro's own words, which are, according to the Professor, to be found in all the best writers on International Law: "A Treaty is the contract by which two or more States regulate, in the manner which they judge most conformable to existing circumstances, the questions, interests and relations between them."

To this Professor Paternostro adds that "a Treaty only expresses the moral and material forces of the States at the time of its being made." What may be the precise meaning of this rider, as it were, Sir Travers does not feel quite certain, neither do we. But we are willing to suppose, with Sir Travers, that what the learned Professor meant was the same as the doctrine embodied in the famous maxim cited by Vattel, *Omnis Conventio intelligitur rebus sic stantibus*. Does this imply that, *rebus mutatis*, the Treaty falls to the ground? asks Sir Travers; and, as a purely Academic question, we may agree with him that the answers given are not altogether at one. Grotius (*De Jure Belli*, II., cxvi.) pointed to the historical cases of Ambassadors returning

home when they learned on their way that the state of affairs was so changed that there was no *materia legationis* left for them. This, we may perhaps be permitted to remark, is not by any means a parallel case to altered circumstances abrogating a Treaty which has been made.

Following Grotius, the late Dr. Bluntschli, who was, with Sir Travers Twiss, one of the founders of the Association for the Reform and Codification of the Law of Nations at Brussels, more than twenty years ago, laid down in his *Droit International Codifié*, §450, that not all modifications which may come to pass in the political order of a State are ground for annulling Treaties, but that some of these modifications do free States from those Treaty obligations which are no longer in harmony with facts. Thus a Treaty based on the State Religion, or the form of Government, would cease to be in force on a change from Roman Catholicism to Protestantism, or from a Republic to a Monarchy, and *vice versâ*.

As to the Extra-territorial status of the subjects of Christian States in Eastern [non-Christian] Countries, Professor De Martens of St. Petersburg, in his *Traité de Droit International*, basing avowedly on facts rather than on the theories of Text-writers, affirms that it is not only a privilege and a right, but an obligation, and this view, Sir Travers reminds us, was accepted by the Institute of International Law at its Turin Session, 1882.

With regard to Bluntschli's view above cited, we may point out what serious consequences it would entail in such a case as that which happened in Mexico, when the Archduke Maximilian of Austria accepted the Imperial dignity which was substituted for the Presidency of the Mexican Republic. All Treaties made with the Republic would, on that theory, at once have been *ipso facto* denounced, and the same would be the case with Brazil, if a restoration of the Empire were to be the outcome of the present internal dissension there.

In other words, confusion would reign supreme, which cannot have been the intention of the parties to the Treaties thus suddenly annulled, and which, in fact, is contrary to the very theory of a Treaty, which is an Agreement between States with a view, amongst other things, to the preservation and stability of peace and harmony among the nations. Looked at from this point of view, therefore, Bluntschli's doctrine appears to us to be subversive of the essence of a Treaty, as known to us in the theory and practice of the Law of Nations, and to that extent, therefore, we should say that it would be dangerous to accept it. There is this additional flaw in Bluntschli's view, that it entirely overthrows, or is at least repugnant to, the doctrine of the continuity of States under whatsoever form of Government they may from time to time choose to live. A State is a *cætus hominum*, and this *cætus* agrees to be governed in a certain way, but although it is common to speak of the French Republic and the German Empire, expressions which simply indicate the existing form of Government in each of those countries, it is obvious that France was just as much France under the Elder Bourbons as under the House of Orléans, or under the Empire or the Republic. And Germany would be no less Germany if it were to constitute itself a Republic to-morrow. To say that Treaties with France or Germany would be abrogated by the mere fact of a change of Constitution would be simply to introduce a constant element of confusion into the relations of all States, for no form of Constitution can be considered permanent and immutable.

Sir Travers shews that in China the Extra-territorial character was accorded to the Arab merchants at Canton so far back as a thousand years ago, in all the essential points which we find as the marks of our own Consular Jurisdiction. It was accorded about the same time by the Khalifs to the Western Nations in the persons of the

merchants of Amalfi, who were given leave to regulate their own affairs at Alexandria under a Podestà of their own nationality. Under these circumstances, it would seem that Sir Travers Twiss is amply justified in refusing to admit the view which represents the Exterritorial Consular Jurisdiction as an encroachment by Christian Consuls subsequently to the 12th century. That is a purely historical question, quite distinct from the other question whether there may not from time to time have been more or less ill-founded extensions of Consular Jurisdiction, and also from the question, which is one of pure fact, whether that Jurisdiction may not be, as Professor De Martens considers, in some points defective, and lending itself to complaints on the part of both the Governments and nations in whose countries it is wielded.

Grotius laid down that if one of the parties to a Treaty violated it, the other party was freed from its obligations, and might withdraw from it. But the denunciation of the Treaty in such a case, says Sir Travers, is not obligatory.

The real question at issue, as between Japan and the Treaty Powers, is whether the circumstances have so changed since the outward adoption by Japan of Western forms of Law and Administration that the state of things which the Treaties presuppose no longer exists.

To this our own answer would be that we think the modes of life and of thought of a nation cannot be altered in a day, or by a stroke of the pen. Marquises and Viscounts and Presidents of Senates and Chambers of Representatives may be made by a stroke of the Imperial pen, but the working of a Constitution is a matter of time. Japanese Law may be modelled on European Codes, but the point is how it is administered, and whether Constitutional Government can yet be said to have taken root. In fact, as Sir Travers pertinently asks, how shall Japan make proof of having really attained her majority?

Let her submit, says Sir Travers, to the principle of the Law of Nations recognised in the Protocol of the Treaty of London, 13th March, 1871. It would seem from recent events that Japan has some large claims to advance in the matter of what she considers Territorial Waters. This is, to our mind, an additional reason for a *festina lentè* in the matter of the somewhat loudly demanded abolition of the Consular Jurisdiction in Japan. Let Japan first shew that she is really governing herself in the spirit of Western notions of Constitutional Government, and let her place before us her views as to what constitute her Territorial Waters, and we shall be in a better position to judge how near she may be to attaining her majority, and whether the time is at hand when it may be wise, in the interests of both parties, to abrogate the Treaties which establish the existing Extra-territorial Consular Jurisdiction in the land of the Rising Sun.

V.—THE LEGISLATIVE COUNCIL AND JUDICIAL INDEPENDENCE IN INDIA.

A LETTER TO THE EDITOR OF *The Law Magazine and Review*.

SIR,—In May last the Government, in reply to Lord Stanley of Alderley's motion regarding the administration of justice in India, admitted that "it was contrary to right and good principle that the Executive and Judicial powers should be united in one person," but declared that it was impossible, at the time, to find the financial means for making the necessary reform.

Now, the difficulties of the Indian Exchequer are shewn, in the last Budget statement, to have arisen, not from diminished revenue, but almost entirely from increased expenditure. It seems difficult, therefore, to believe that,

during a period of profound peace, when no danger looms in the immediate future, some retrenchment in the overgrown Army expenditure of India should not be practicable, such as would admit of initiatory steps being taken towards the reform of a system condemned on all sides, and which the Government itself admits to be wrong in principle. Far, however, from any endeavour having been made towards that end, the evil is being seriously aggravated by the creation of new Courts of Judicature, which are to be presided over, not by duly qualified and independent Judges, but by Government servants directly amenable to the influence and control of the Executive.

In 1892 the "Madras City Civil Court Act" created a tribunal having a concurrent jurisdiction with the Chartered High Court of the Presidency, but evidently intended, through favourable clauses regarding costs, to divert suits from the High Court, which inspires the people with confidence, to the newly-created tribunal, the constitution of which is looked upon with dismay. Since then, a Bill has been introduced in the Legislative Council of the Viceroy—the "Presidency Small Cause Court Bill"—for the purpose of creating another tribunal on the same lines; and when, at the sitting of the Legislative Council on the 4th January last, the Legal member proposed that the Bill should be withdrawn, unless the jurisdiction of the projected Small Cause Court were limited to suits of 1,000 Rupees and special qualifications were imposed upon the Judges, His Excellency, the Viceroy, as President, immediately intervened, declaring that the statements of the Legal member of Council should be taken to represent his own views, and in no way to commit the Government of India.*

* My authority is the *Pioneer*, for 7th January, 1894. The official report of the debate will probably come by the next mail from India. [See *Postscript*.]

This remarkable incident discloses a marked divergence of view amongst the official members of the Legislative Council; but it also discloses the important fact that some of the official members of that Council object to being made the instrument for giving the force of law to measures which are repugnant to their judgment and their conscience. That similar incidents have not hitherto been more frequent may perhaps be ascribed to the Indian Secretary of State's despatch of the 24th November, 1870, in which the Cabinet Minister asserts his power to require the Governor-General to introduce a measure, and to require all the members of his Government to vote for it.

A well-founded impression prevails that Parliament intended the Legislative Council of India to be a Deliberative body; but the above-mentioned despatch has converted it into a mere Administrative Office, charged with giving the form and authority of law to the determinations of a Cabinet Minister. Deliberation, at all events, has been excluded from the Council, and the Indian Legislature has become in practice a pure delusion. The Council Amendment Act of Lord Cross might have corrected the fault had the Representative principle been incorporated in it to a reasonable extent; but in its actual form, with the evident determination of the Government to continue using the Indian Legislature as an auxiliary in the promotion of the interests of the British Cabinet, under the name of Imperial interests, the evil must endure until the injustice and suffering which it inflicts on the Indian populations become unendurable.

I am, Sir, your obedient servant,

J. DACOSTA.

1st February, 1894.

Postscript, 5th February.—The Indian mail has just brought the official report, printed in the *Gazette of India*

(Calcutta), for 13th January, 1894, Pt. VI., of the speech delivered on the 4th January by the member in charge of the "Presidency Small Cause Court Act Amendment Bill."

It seems evident that the object of this measure, as framed by the Executive, is to divert suits from the High Court to a Small Cause Court, in which the Judges are to be, not trained lawyers, but Government servants, who may, without possessing any real professional qualification whatever, have attained the technical position of having been called to the Bar. Moreover, Section 8, after providing for the status of the Chief Judge, runs thus:—"The other Judges shall have rank and precedence as the Local Government may from time to time direct." On this point the member in charge (Hon. Sir Alexander Miller, Q.C.) observed:—"Now, there is not, so far as I know and believe, any Court in the civilised world—there is certainly not any British Court—in which the Judges other than the Chief Justice or the Chief Judge, have any difference in rank or precedence other than that which follows from the dates of their appointments; and to place it in the hands of the Executive Government of any country to alter the precedence of the Judges, would be to do the very thing which the English Constitution has been labouring to avoid ever since the Revolution, that is, to keep the Judges dependent on the favour of the Executive."

J. D.

[* * The speech of Hon. Sir Alexander Miller, to which our correspondent justly draws attention in his *Postscript*, contains, it appears to us, strong internal evidence, in other passages which we have not space to reproduce, of the gravity of the questions at issue under the specious name of the "Presidency Small Cause Court Act Amendment Bill," and also that Sir Alexander is fully awake to the fact

of their gravity. We are glad to find that where the Judges of the High Court, Calcutta, have spoken on the subject, to the effect that "whenever a professional man can be obtained it is desirable that he should be obtained" for the office of Judge, Sir Alexander is on their side, and also that he would rather his present Bill "were abandoned altogether than allowed to pass leaving, as things stand at present, Judges who might be appointed having no professional qualification whatever." We are also glad to find Sir Alexander's feelings thoroughly in accordance with our own on the point that the Judges of the High Court would be the best body to frame Rules of Procedure for the new Presidency Small Cause Court, and that it is not a proper course to pursue to leave these rules to be framed by the Judges of the new Court, who are Government servants, with the consent of the Local Government. This would practically amount to the Executive taking the place of the Judicature, and the whole tenor of the establishment of the Small Cause Courts would appear to be the aggravation of the evil, admitted in Parliament even by its apologists on financial grounds, of the Fusion of the Executive and Judicial Powers, and would constitute a new attack on Judicial Independence in India. *Quod omen avertat Deus!*—ED.]

VI.—FOREIGN MARITIME LAWS: IV. SCANDINAVIA.

CHAPTER VI.

Bottomry.

174. When a Commander, in a case of necessity, for the prosecution of the voyage or the preservation or forwarding of the cargo, raises money by bottomry on ship, freight or cargo, in the manner hereinafter prescribed, the lender on bottomry can only recover his money at the conclusion of the voyage from the things that are pledged. But on these things he has the rights conferred by Chapter XI. (*post*) of this Law on holders of a maritime lien.

The Swedish Code adds a clause in terms allowing the lender and borrower on bottomry to agree on the premium or maritime interest to be paid for the loan.

B. 156, 164, 165, F. 315, 317, 325, G. 680, 681, H. 569, 588, I. 599, P. 630, R. 385, S. 719, 731. E. 149, 165-167.

175. A loan on bottomry may be raised on ship, freight, and cargo, jointly, or on any of them severally. If a loan is raised for the sole benefit of the cargo, the cargo may be separately bottomried. In other cases, the cargo can only be bottomried in conjunction with ship and freight. If the ship and cargo are jointly bottomried for the same loan, the freight is deemed to be included in the security, but in other cases the freight must be specifically mentioned as included.

If anything has been bottomried for money, the expenditure of which does not concern it, and the lender recovers from the article so bottomried, the owner of it can recover the amount he has to pay from the other articles on behalf of which the expenditure was

made and has the same rights as if these articles were bottomried to him.

See Arts. 268 and 281, *post*.

In the most usual case of a bottomry bond on ship, freight, and cargo for the benefit of ship or to enable her to earn freight, the practical effect of this rule would appear to be to exhaust ship and freight before touching the cargo.

F. 315, 320, G. 680, 681, H. 569, 574, I. 593, 595, P. 628, R. 382, S. 723. E. 155.

176. Before raising money on bottomry, the Commander must make an accurate statement of the circumstances which necessitate his having recourse to bottomry, observing as far as possible the procedure laid down in Art. 41, and also referring to depositions taken by the Consul, or, if there is no Consul at the place, by some other authority.

As to communication with owners of ship and cargo, see Arts. 52 and 57, *ante*, and as to bottomry at home port, Art. 48, and as to the position of a bottomry bondholder where money has been improperly raised, Arts. 49, 175.

G. 686, H. 372, 579, I. 509, 591, R. 383.

177. When money is raised by bottomry, the signed contract must be in writing, and, to be valid, as a bottomry bond, must contain :—

- (1.) The denomination "Bottomry Bond" (*Bodmeribrev*), or some similar term, stating that the contract is for a loan on bottomry ;
- (2.) The name of the lender ;
- (3.) The amount of the loan and the premium upon it ;
- (4.) A statement of what property is pledged ;
- (5.) The name of the ship ;
- (6.) The particulars of the voyage for which the loan is made.

The Swedish Code adds (7)—The signature of the master and date and place of issue,—obvious provisions which are practically covered in this version by requiring the contract to be signed.

G. 684, H. 570, I. 590, P. 626, S. 720, 721. E. 150.

178. A lender on bottomry may require the bond to be made out in duplicate or more copies, of which the

contents are identical and each must state how many copies are executed.

The transfer of a bottomry bond to a third person does not act as a bar to any objection to the circumstances in which the loan was raised or the necessity for it.

The Swedish Code seems to imply that the Bond is not transferable unless it contains a clause allowing a transfer; otherwise it is to the same effect as this version.

B. 162, 163, G. 685, 687, H. 573, I. 592, P. 627, S. 722. E. 154.

179. Average contributions for which the property that is bottomried is liable are paid by it without any abatement of the bottomry debt, but if, after payment of such contributions, the value of the property pledged proves insufficient to pay the bottomry loan in full, the lender on bottomry must bear the loss.

B. 166, 167, F. 330, G. 691, H. 589, I. 603, P. 631, S. 732. E. 171.

180. The Commander is bound to use all reasonable means to preserve and save the bottomried property; except for urgent reason he must do nothing to enhance the risk which the lender on bottomry had reason to anticipate from the conditions of the bond; otherwise, the Commander is liable for any loss the creditor sustains thereby.

If the Commander alters the bottomry voyage except in case of necessity or in the interest of the bondholder, or deviates from the ordinary route for any reason except that of saving life, or after the voyage has terminated exposes the bottomried property to a fresh risk, and subsequently the property proves insufficient to meet the bottomry bond, he will be held responsible for the balance, unless he can prove that the deficiency would have existed even if he had strictly conformed to his duty.

B. 164, G. 693, 694, H. 587, 590, I. 598.

181. Unless otherwise agreed, the bottomry debt becomes due at the place where, in accordance with the conditions of the bond, the voyage terminates, and on the

seventh day after the ship's arrival without allowing any running days.

If the voyage terminates before the ship reaches her destination as stated in the Bottomry Bond, the debt becomes payable on the seventh day after the termination of the voyage, and at the place where the voyage does, in fact, terminate. The Commander must give the lender on bottomry immediate notice of the discontinuance of the voyage. If the discontinuance is due to any causes other than such as are mentioned in Arts. 159 and 160, the Bottomry Bondholder has a right to compensation for any expense occasioned thereby.

G. 688, 699, H. 570, P. 626.

182. After a bottomry debt is due and payment has been demanded but not made, the Bottomry Bondholder is entitled to interest at 6 per cent. per annum on the amount of the loan and on the premium. If the premium is calculated by time it ceases to accrue after the bond is matured.

The Swedish version substitutes legal interest for 6 per cent., but as legal interest on unpaid Mercantile loans is 6 per cent. in Sweden, there is no real difference.

B. 161, G. 688, I. 596, S. 736.

183. When payment is due, it may be demanded on presentation and surrender of any of the original copies, endorsed with a receipt of the amount. If several holders of copies present them and demand payment, the bottomry debt must not be paid to any of them, but the Commander must place the amount in safe deposit, and give notice to the claimants of his having done so. The Commander must not pay the bottomry debt before the date at which it matures unless he gets possession of all the copies he has signed.

The Swedish version contemplates the rival claimants appointing a trustee to hold the money, and only in default of their agreement lets the Commander select his own deposit, and in the second clause only requires all the bonds to be got in when the Bond is transferable. See Art. 178, *ante*.

G. 689, 690.

184. If the bottomry bond is not presented for payment at maturity, the Commander may place the amount of it on secure deposit, and so free the bottomried articles. If money is so deposited, the Commander must give the bottomry creditor immediate notice of the fact.

185. A bottomry bondholder may arrest the articles which are bottomried on the arrival of the vessel at the place named in the bond, or on the termination of the voyage at any other port, notwithstanding that payment is not yet due. This arrest need not be followed by further proceedings for compensation, and is only operative for eight days after the bond is matured.

If a bottomry loan is not paid off after due demand, the bottomry bondholder may, without a formal judgment of the Court, issue execution against the articles bottomried, and afterwards sell them by public auction.

If there is reason to fear that cargo under bottomry will deteriorate if detained for a considerable period, application may be made to the authorities, and with their permission the goods may be sold as soon as possible. The sale must always be announced in sufficient time to allow buyers at least one day's notice.

If, when the execution is put in force, an objection is raised to the validity of the bond or of the claim, or if a third party comes forward claiming a better title to the goods, the Court may require the bottomry bondholder to find security as a condition precedent to issuing execution.

The Swedish version is shorter ; it contains only the first sentence and a clause authorizing a sale on application to the High Bailiffs, and delivery of the proceeds to the Bondholder to satisfy his claim.

G. 692.

186. If the voyage is abandoned before it has commenced the bottomry loan becomes due at once at the place where the voyage should have begun, and in such case the borrower, in lieu of the agreed premium, pays 5 per cent. interest per annum on the capital and 3 per cent. by way of

commission. If the ship has sailed, the premium must be paid, even if the voyage is subsequently abandoned.

G. 699, H. 586, I. 597, S. 727, 729. E. 169.

V. PORTUGAL.

CHAPTER VII.

Passengers.

ART. 563. The carriage of passengers will, in the absence of special agreements, be regulated by the provisions of this chapter.

B. Bk. II., Tit. iv., G. Pt. 6, I. Bk. II., Tit. iv., Ch. iv., M.M.C., Ch. viii.

564. If a passenger does not come on board at the proper time, the whole passage-money is due :—

§1. If he fails to come on board in consequence of death, illness, or other cause beyond his control (*força maior*), which prevents him prosecuting the voyage, or if he gives notice that he abandons it, half passage-money is due :—

§2. If the passenger is prevented from prosecuting the voyage by the Commander's act, he has a right not only to the immediate repayment of his passage-money, but also to compensation for his losses and damages.

§3. If the hindrance is caused by accident or causes beyond the control of the parties (*força maior*) which affect the ship, the passage-money must be repaid, and the contract is deemed to be rescinded without any claim for compensation on either side.

B. 127-131, G. 667, 668, 670, 671, I. 583, H. 522, 524, 525, S. 694, 696, 697, Sc. 169, 170. E. 136, 137.

565. If, in the course of the voyage, a passenger chooses to land at a port other than that to which he has taken passage, full passage-money is due.

§1. If he disembarks at a port other than that to which he is bound, in consequence of the Commander's act

or default, he has a claim for compensation for losses and damages.

§2. If he disembarks in consequence of an accident or a cause beyond control (*força maior*) affecting either the ship or the passenger, passage-money is due *pro ratâ itineris peractâ*.

B. 130, 131, G. 667, 668, 670, 671, I. 584, S. 698, Sc. 170. E. 136, 137, 140.

566. If a passenger is lost by shipwreck, nothing is repayable to his heirs which has been paid, nor can anything be demanded from them if not paid.

G. 669, I. 584. E. 138.

567. If the sailing of the ship is delayed for any reason other than accident or circumstances beyond control, a passenger has a right to remain on board, and also to be victualled during the whole period of the delay, and further, to compensation for loss and damage.

B. 133, G. 672, I. 585, S. 698.

568. If the delay exceeds ten days, the passenger may rescind the contract, and claim the repayment of passage-money that he has paid :—

§1. Provided always that if the delay is caused by bad weather, the repayment will only amount to two-thirds.

B. 133, G. 672, I. 585, S. 698.

569. Where a vessel is used exclusively for the carriage of passengers, she must take them to their destination without other stoppages than such as have been notified beforehand or are customary.

B. 126, I. 586, H. 529, S. 698, 701.

570. If the ship deviates from her voyage through the action or default of her Commander, the passengers will be boarded and lodged for the whole time of such deviation at the expense of the ship, and have a right to compensation for loss and damage if the contract is rescinded.

I. 586.

571. If the ship carries cargo as well as passengers, the Commander may go into any port that is proper for him to discharge in.

B. 126, I. 586.

572. When the ship is detained for repairs a passenger may rescind the contract on payment of passage-money in proportion to the distance accomplished :—

§1. If he prefers to wait till the ship resumes her voyage there is no increase in the passage-money, but he will victual himself during the delay.

B. 133, G. 672, I. 587, H. 526, S. 698. E. 141.

573. The victualling of a passenger during a voyage is deemed to be included in the passage-money :—

§1. If the victualling is excluded, it is the duty of the Commander to supply what is necessary to a passenger at a fair price.

§2. In the case of voyages beyond the mainland of the realm passengers have a right to stay on board and be victualled for such time as the vessel remains at the port of destination, if not exceeding 24 hours.

B. 121, I. 588, H. 530, S. 702, Sc. 173. E. 142.

CHAPTER VIII.

Privileged Claims and Mortgages.

SECTION I.

Privileged Claims.

574. The claims specified in this section have a preference over any general or special privileges on chattels conferred by the Civil Code.

F. 214, I. 666, H. 312, 313, 318, Sc. 267.

575. In case the ship or any other object to which the privilege attaches deteriorates or diminishes in value the privilege still attaches to the residue or to what can be salvaged and placed in safety.

3, I. 667, Sc. 271.

576. If the proceeds of the ship or articles to which the privilege attaches do not suffice to pay off the privileged debts of a class, they are divided rateably among themselves.

B. 4, F. 191, I. 669, S. 581.

577. The endorsement of a document conferring a privileged claim carries the privilege with it.

F. (1885) 12, I. 670.

578. Debts which are privileged upon the ship are ranked in the following order :—

- (1.) Costs and Court charges incurred in the general interest of the creditors.
- (2.) Rewards due for assistance and salvage.
- (3.) Pilotage and towage into port.
- (4.) Tonnage, light and anchorage dues, public health and other port charges.
- (5.) Charges for watching the ship and warehousing its appurtenances.
- (6.) The wages of the Commander and crew.
- (7.) Charges for looking after and repairing the ship, its apparel, and furniture.
- (8.) The repayment of the price of cargo that the Commander has found it necessary to sell.
- (9.) Insurance premiums.
- (10.) Balance of purchase-money due for the last transfer of the ship.
- (11.) Expenses incurred in repairing the ship, its apparel, and furniture for three years prior to the voyage, reckoning from the day on which the repairs were completed.
- (12.) Debts arising from the contract for building the ship.
- (13.) Insurance premiums on ship if the whole is insured, or on the part and its appurtenances which are insured and are not included in No. 9.
- (14.) Compensation due to shippers for short delivery or for damage to cargo.

§1. The debts mentioned in Nos. 1 to 9 (inclusive) refer to such as are contracted in the course of the last voyage and on account of it.

- (1.) B. 4 (1), F. 191 (1), G. 757 (1), 770, I. 675 (1), H. 317, S. 580 (2). E. 5 (1).
- (2.) B. 4 (6), I. 675 (2), H. 313 (1), Sc. 268 (1).
- (3.) B. 4 (2), F. 191 (2), G. 757 (5), 772 (3), I. 675 (4), H. 313 (1), S. 580 (3), Sc. 268 (1). E. 5 (2).
- (4.) B. 4 (2), F. 191 (2), G. 757 (3), 772, I. 675 (3), H. 313 (2), S. 580 (3) E. 5 (2).
- (5.) B. 4 (3, 4), F. 191 (3, 4), G. 757 (1, 2), 770, I. 675 (4, 5), H. 313 (3, 4), S. 580 (4, 5). E. 5 (3, 4).
- (6.) B. 4 (7), F. 191 (6), G. 757 (6), 761, 771, 772, I. 675 (7), H. 313 (5), S. 580 (6), Sc. 268 (2). E. 5 (6).
- (7.) B. 4 (9, 10), F. 191 (5), I. 675 (6), H. 313 (6), S. 580 (8). E. 5 (5).
- (8.) B. 4 (8), F. 191 (7), G. 757 (9), 772 (5), H. 313 (6), S. 580 (7), Sc. 268 (3) E. 5 (7).
- (9.) B. 4 (12), F. 191 (10), I. 675 (10), S. 580 (9). E. 5 (10).
- (10.) B. 4 (15), F. 191 (8), I. 675 (12), 315 (1), S. 580 (8). E. 5 (8).
- (11.) F. 191 (8), H. 313 (7), S. 580 (8), Sc. 268 (4). E. 5 (8).
- (12.) B. 4 (10, 11), F. 191 (8), H. 313 (8), S. 580 (8). E. 5 (8).
- (13.) B. 4 (12), F. 191 (10), I. 675 (10), S. 580 (9). E. 5 (10).
- (14.) B. 4 (13), F. 191 (11), G. 757 (8), 772 (4), I. 675 (11), H. 313 (10), S. 580 (10), Sc. 268 (4). E. 5 (11).

579. Privileges pertaining to debts on the ship are extinguished :—

1. By the ordinary methods in which rights are lost.
2. By a sale of the ship by Court: as soon as the purchase-money is paid into Court, the privilege and claim of the creditors is transferred to the fund.
3. By a voluntary sale effected after citing the privileged creditors, when three months have elapsed without their taking steps to avail themselves of the privilege or attach the purchase-money.

B. 6, F. 193, G. 767, 768, I. 678, H. 316, S. 582. E. 7.

580. Debts which are privileged upon cargo are ranked in the following order :—

1. Court charges incurred in the general interest of the creditors.
2. Rewards due for salvage.

3. Custom House duties at the port of discharge.
4. Charges for freight and discharging.
5. Warehouse expenses.
6. Contributions to general average.
7. Moneys advanced on bottomry of this security.
8. Premiums of Insurance.

§1. The privileges of which this Article treats may be general, affecting the whole cargo, or special, affecting a portion of it, according to whether the debts are in respect of the whole or a portion of it.

B. 71, 80, F. 280, 306-308, G. 781, I. 671 identical, except that (7) and (8) are transposed, H. 487, 548, 566, S. 665-668, 678, Sc. 276. E. 124-126.

581. Privileged claims on cargo lapse if the creditors do not make use of them prior to the discharge of the cargo, or within 10 days immediately following it if during that time the cargo has not passed into the possession of a third party.

B. 80, 81, F. 307, 308, I. 672, S. 667, Sc. 277, E. 126, 127.

582. Debts which are privileged upon freight are ranked in the following order:—

- (1.) Court charges incurred in the general interest of the creditors.
- (2.) Wages of the Commander and crew.
- (3.) Contributions to general average.
- (4.) Advances on bottomry of this security.
- (5.) Premiums of insurance.
- (6.) Amount of compensation due for short delivery of cargo.

(2.) B. 63, F. 271, G. 757, 759, I. 673, H. 321, 451, S. 587, 646, Sc. 268. E. 30, 89.

583. Privileged claims on freight lapse as soon as the freight is paid, except in the case mentioned in Art. 523, when the privilege attaching to seamen's wages is only extinguished when six months have expired from the date of the abandonment of the voyage.

G. 774, S. 646.

SECTION II.

Mortgages.

584. Mortgages on ships are created either by operation of law or by agreement between the parties.

B. 1, 134, F. (1885) 1, 35, S. 578.

585. Mortgages on ships, whether created by operation of law or voluntarily, produce the same results, and are governed by the same rules as mortgages of real property, so far as their peculiar nature permits, and except as modified by the present section.

B. Bk. II., Tit. v., F. Law of 1885.

586. Mortgage on ships can only be effected by their actual owners or by a special power of attorney :—

§1. When a ship belongs to more than one person, the whole may be mortgaged for the expenses of fitting out and making a voyage, by the express agreement of the majority representing more than half of the ship.

§2. A part owner of a ship cannot mortgage his share in the ship except with the consent of the majority defined in the preceding paragraph.

B. 23, 136, F. (1885) 3, G. 467.

587. A mortgage on a ship that is being built or to be built is also allowed for the expenses of building, provided that the deed of mortgage at least specifies the length of the keel of the ship and approximately its other principal dimensions, as also its probable tonnage, measurement, and the building yard in which it is being built or to be built.

B. 138, F. (1885) 5, I. 486, Sc. 3.

588. A mortgage on a ship is created by an attested deed except in the case mentioned in § 2 of Art. 591.

B. 135, F. (1885) 2, I. 485.

589. A mortgage on a ship securing debts that carry interest covers interest for five years in addition to the capital.

B. 143, 145, F. (1885) 13, H. 315 (2).

590. Mortgages on ships will be registered by the registrar of the Tribunal of Commerce at the ship's home port:—

- §1. In the case of a mortgage being given on a ship which is being built or to be built, the proper registrar is the one at the place where the building yard is situated.
- §2. Where the ship's port of registry is different from that where she is built, a certificate must be produced from the latter stating if there is a mortgage on it or not ; if there is, the mortgages that are registered must be transferred and registered at the ship's port of registry.

B. 139-141, F. (1885) 6, I. 485, 486, H. 315.

591. A shipowner may place on the register a provisional mortgage specifying what sum or sums of money may be raised on the ship in the course of the voyage:—

- §1. The entry of the mortgage will be made when out of the realm by the regular Portuguese Consular officer.
- §2. If there is no Consular officer at the place where it is desired to mortgage, the mortgage may be effected by a deed executed on board by the contracting parties in the presence of two witnesses, and entered in the ship's account book.

See F. (1874) 26, now repealed by F. (1885) 39.

592. Mortgages will be paid after the satisfaction of debts privileged on the ship in the order of priority of the entry on the Commercial register:—

- §1. If there are several mortgages registered on the same day, they will be paid *pro rata*.

B. 142, 150, 151, F. (1885) 10, 34, I. 675 (13), H. 315 (2).

593. Mortgages on ships are subject to extinction by lapse of time in accordance with law.

B. 143, F. (1885) 11.

594. If the ship is lost or condemned, the rights of mortgagees include the remains of the ship and also the insurance.

B. 149. See F. (1874) 17, which, however, is now repealed by F. (1885) 39, I. 667, 675 (13).

F. W. RAIKES.

VII.—CURRENT NOTES ON INTERNATIONAL LAW.

Public International Law.

Hawaii and "Intervention."

The doubts expressed by us in this *Review*, in the number for February, 1893, as to the spontaneity of the Hawaiian "Revolution," have been more than justified by subsequent events. The intervention of the United States proves to have been more "precipitate" even than we surmised when we used that term on the occasion above referred to. It would appear, in the light of after events, to have been dictated largely by the promptings of partisan politics on the eve of the General Election. Great Britain experienced something similar a few years ago, in the case of the "Sackville Incident."

The new President, in his Inaugural Message to Congress, dealt with his predecessor's policy of annexation in a spirit of almost humiliating candour.

"After a thorough and exhaustive examination," ran the Message, "Mr. Blount has submitted to me his report, 'shewing beyond all question that the Constitutional Government of Hawaii has been subverted with the active aid of our representative to that Government, and through intimidation caused by the presence of an armed naval force of the United States which was landed for that purpose at the instance of our Minister."

"Upon the facts adduced, it seemed to me that the only "honourable course for our Government to pursue was to "undo the wrong and to restore as far as "practicable the *status* existing at the time of our forcible "intervention."—(*Times*, 5th December, 1893.)

Acting upon this view of the matter, the President recalled the offending Minister, Mr. Stevens, and gave "appropriate instructions" to Mr. Willis, the new representative of the United States, to take steps to restore the *status quo*.

Early in January last Mr. Willis called upon the Provisional Government to surrender office, and handed them a conditional promise of amnesty from the Queen (*Times*, 10th January, 1894). The Provisional Government has, however, so far declined to submit. The United States Cabinet has meanwhile remitted the whole matter to Congress (*Times*, 11th January, 1894).

On 6th February an amendment, proposed in the House of Representatives, approving of annexation and recognition of the Provisional Government was lost, while the substantive resolution was carried condemning the action of the late United States Minister, Mr. Stevens, approving the attitude taken up by the President, and deprecating annexation as uncalled for and inexpedient (*Times*, 7th and 8th February, 1894). How the matter will end it is at present difficult to foretell, but it seems extremely probable that, by a strange irony of fate, the United States Government will have to forcibly "intervene" a second time in order to remedy what the President called its first "unjustifiable intervention."

* * *

Private International Law.

Foreign Sovereigns and Ambassadors.

The Court of Appeal, as was anticipated, dismissed the appeal in the case of *Mighell v. The Sultan of Johore*

(L.R. [1894] 1 Q.B. 149), relying upon the well-known decision in the case of *The Parlement Belge*, 5 P.D. 197.

The points of real interest in the case were two in number: firstly, the admission of a letter from the Secretary of State for the Colonies as conclusive evidence of the sovereignty of the defendant Sultan; and, secondly, the *dictum* of the Court that the mere fact of the Sultan having lived and acted as a private person, and resided here under an assumed name as a private person, was not evidence of submission to the Jurisdiction. "I should put it thus," said Kay, L.J., "the foreign Sovereign is entitled to immunity from civil proceedings in the Courts of any other country, unless upon being sued he actively elects to waive his privilege and to submit to the Jurisdiction."

A very pretty question was raised in the case of *Musurus v. Gadban and others* (10 Times L.R., p. 90).

The defendants in an action brought by the executor of Musurus Pasha, the late Turkish Ambassador to this country, counterclaimed for £3,000, alleged to have accrued due from the Pasha during the actual term of his Embassy. The defence was that the debt was barred by the Statute of Limitations. To this the plaintiff in the counter-claim replied that time had been prevented from running on two grounds, partly owing to the Ambassadorial privilege, which, under the Statute 7 Anne, c. 12, precluded litigation prior to the Pasha's recall, and partly owing to his subsequent absence beyond seas (under 4 and 5 Anne, c. 16).

The Divisional Court held that the action was not barred on these grounds, and laid it down further that the privilege extended beyond the date of actual recall, and until a reasonable time for departure from the country had elapsed, and that the possibility of serving out of the Jurisdiction under Order XI., R.S.C., did not affect the principle of 4 and 5 Anne, c. 16.

Domicile.

There is an important decision of Stirling, J., in the case of *In re Beaumont*, L.R. [1893] 3 Ch. 490; as to the domicile of fatherless children. The Court, relying mainly on *Pottinger v. Wightman*, 3 Mer. 67, and *Johnstone v. Beattie*, 10 Cl. and Fin. 42, held (a) that there is a "considerable weight of authority for the proposition that when the mother of infant children re-marries, their domicile ceases to follow hers," and (b) that in any case the change of a fatherless infant's domicile "is not to be regarded as the necessary consequence of a change of the mother's domicile, but as the result of the exercise by her of a power vested in her for the welfare of the infants, which in their interest she may abstain from exercising, even when she changes her own domicile."

J. M. GOVER.

Quarterly Notes.

Trial by Jury in Italy.

According to *La Tribuna* (Rome, 14th December, 1893, 2nd edition), one of the best informed and most outspoken of Roman journals, public opinion in Italy has been greatly shocked at the immunity which Juries have of late accorded to malefactors in several cases of murder and attempted murder. In view of these by no means isolated instances of the miscarriage of justice, an outcry has been rashly raised for the suppression of the Jury system altogether. Those who entertain more moderate views, however, recommend the reform rather than the total abolition of this popular institution. If, as the *Tribuna* points out, it were possible to elevate the character of the Judicial bench from its present unsatisfactory condition to a really high level of excellence, Trial

by Jury might be discarded, not alone without misgivings, but even with readiness, in all cases not involving Political issues. But, according to the above cited authority, to effectuate such a transformation would be a task of far greater difficulty than an amelioration of the present system of Trial by Jury, and it therefore suggests that the efforts of the Legislature should, in the first place at all events, be directed to a reform of the latter by adopting to a large extent as a model the system which prevails in England. The modifications proposed are a revision of the Jury lists so as to ensure as far as possible the attendance of citizens possessing a higher order of intelligence and capacity than that which is now generally available; the infliction of stringent penalties upon Jurymen absenting themselves from their duties without justification or excuse; and more particularly their rigorous confinement during the whole period that they are exercising their functions. Upon the urgent necessity for the restriction just mentioned, the writer of the article in question is very emphatic, adducing in favour of his argument facts which, by those accustomed to the fair administration of justice, will be received as an unpleasant revelation. He does not hesitate to affirm in the most absolute and unmistakeable terms that there are advocates, even in the Courts of Rome itself (though at the Capital instances are rarer), whose fame and fortune have been built up, not by Juridical erudition, forensic skill, or oratorical capacity, but by a systematic and successful "lobbying" of the Jury during the intervals of the hearing, such "lobbying" consisting at times of no more than friendly persuasion, but at others proceeding a good deal farther than that. Here in England, where Bar and Jury are happily above suspicion, the knowledge of such a deplorable condition of things will excite a feeling of painful surprise, and it will be readily conceded that not only should com-

munication between advocates and Juries, during the progress of a trial, be rigorously prohibited, but that such malpractices, when discovered, should be visited with exemplary punishment at the hands of those whose duty it is to protect from discredit and degradation the honourable profession of the Law.

* * *

A New French Review of International Law.

We have just received the first number of a new French publication, the *Revue Générale de Droit International Public* (Paris: A. Pedone), edited by Antoine Pillet, Professor of International Law in the Faculty of Grenoble, and Paul Fauchille, Doctor of Law and Laureate of the Institute of France, with the concurrence of other well-known writers and Professors, such as Edouard Clunet, of Paris, editor of the *Journal du Droit International Privé*; De Martens, of St. Petersburg, who contributes to the opening number; Stoerk, of Greifswald, the continuator, and, therefore, in a certain sense, the *alter ego* of De Martens, in his *Nouveau Recueil*, and Ernest Lehr, of Lausanne, the present General Secretary of the Institute of International Law; Lammasch, of Vienna, and several distinguished French publicists. The opening number contains only three Articles, as we should reckon, but they are all of considerable interest. It is significant of the influence which the recent Arbitration in the Behring Sea Fisheries has exercised over men's minds that two out of these three Articles are devoted to the subject of Arbitration, Prof. De Martens treating of it in connection with the question of the limits of Territorial Waters, while Prof. L. Renault, of Paris, discusses a New Mission given to Arbitration in International differences. The only Article not devoted to the special subject of Arbitration is by one of the editors, M. Pillet, and takes up the broad ground of the subject-matter of the new *Review*, viz., Public International Law: its constituent elements, its field, and its object.

Besides these Articles and a separately paged part devoted to the printing of Texts of Laws and Decrees and other Documents, there is a nearly equal amount of space given to a running commentary on events connected with International Law, under the title of "Chronique des faits internationaux," followed by a Bibliographical Bulletin of Books and Periodicals, where, by the way, our valued contributor, Dr. Gover, has his name fused with the title of his contribution, and appears under our November number in the strange guise of "GOUVERCURRENT. Notes de Droit International." In their next number we shall, no doubt, find that our Paris friends will have learned to separate the man from his work. In touching on Brazil, the *Chronique* draws attention to the singular position taken up by the Foreign Naval force stationed off Rio, which, as it truly remarks, seems to have assumed the attitude of a sort of International Court, advising both sides, and probably not blessed by either. In his Article on the Paris Tribunal, Prof. De Martens inclines to the view that ten miles may be found a practical limitation for the Territorial Waters of the Future, for, as he justly remarks, the limit cannot go on being indefinitely extended. There is much that deserves more notice than we can at present give to our new contemporary. We shall look forward with interest to succeeding numbers of the *Revue Générale de Droit International Public*.

Reviews.

Supplement to the Fourth Edition, by L. G. G. Robbins, of Bythewood and Farman's Conveyancing. By THE EDITOR and ARTHUR TURNOUR MURRAY, of Lincoln's Inn, Barristers-at-Law. Sweet and Maxwell, Limited. 1893.

This is a very diligent piece of work, indispensable to all who possess Mr. Robbins' Edition of *Bythewood and Farman*, and of

considerable value to all Conveyancers who still turn for precedents to its monumental predecessor. The justification of such a Supplement is its completeness, and the present work appears, on examination, fairly to fulfil that object down to July, 1893. Except for cases not appearing in the *Law Reports*, other Reports are not generally referred to. When a case has been reported in both *Law Journal* and *Law Times*, although not in the *Law Reports*, a reference to the *Weekly Notes* might, we think, have been omitted. The new matter is introduced with convenient variety, sometimes by a plain reference to the actual authority, sometimes by a short statement of the law as altered. In this latter respect, we cannot always agree with the authors of the *Supplement*; thus the statement of *Re Faux* and *Re Lancely*, on p. 395, hardly expresses the point, which was that the legatee in question was not really a witness at all. The book, however, distinctly fulfils its claim to be, within its sphere as a Supplement, "a guide to recent case law and legislation." Though itself alphabetical in arrangement, it contains a full Index, and there is a Table of comparative references for the Old Reports and the Revised Reports, which those who use the latter volumes will appreciate.

Reminders for Conveyancers. By HERBERT M. BROUGHTON, of the Inner Temple, Barrister-at-Law. Horace Cox. 1892.

This is a useful little book, the greater part of which has already appeared in the columns of our valued contemporary, *The Law Times*. References from time to time to several leading authorities on the now moribund art of conveyancing cannot but prove convenient to the modern Scrivener.

Copyright, Patents, Designs, Trade Marks, &c. By WYNDHAM ANSTIS BEWES, LL.B., of Lincoln's Inn, Barrister-at-Law. Adam and Charles Black. 1891.

The reason given for the somewhat unscientific grouping together under the same cover of chapters upon the above-named branches of law is, that being the principal legal monopolies depending on invention, they stand in close relationship one to another. The connection does not, however, appear to all minds particularly obvious, and, judged by the result, Mr. Bewes's

performance seems far from satisfactory. There is quite enough learning on the subject of Copyright and Patents, for instance to entitle them to a volume apiece, unless, indeed, the author had been possessed of such a genius for lucid condensation as manifests itself throughout the Digests of Sir James F. Stephen. In such a case he might perhaps have been able to produce a serviceable treatise. But in the 341 pages of which the volume is composed we do not find any strong evidences of the author's power in that direction. We are told on the title page that the work is a manual of practical law, and we endeavoured to put its practical character to the test by looking, under the head of International Copyright, for that important section of the Act of 1886, viz., sect. 6, which deals with works which have been lawfully produced before the Berne Convention was brought by it into operation in the United Kingdom. On turning to page 57 what do we find? "The whole working of the details of the Act is left to Orders in Council, and for this reason it seems unnecessary to print here the Act itself as *most* of its provisions [the italics are ours] re-appear in the Order set out below, which was published in the *London Gazette* of 2nd December, 1887; and for notes on Act see page 71." The Order in Council does not reproduce sect. 6 of the Act, and we therefore turn to page 71, where we are told that "the protection of the 1886 Act applies to works published before the date of the Order in Council saving the rights obtained by any lawful previous publication in the United Kingdom, sect. 6." The author has thus omitted to mention that the proviso of the section is only operative when "the rights or interests arising from or in connection with such production are subsisting and valuable at the said date," that is, at the date when the Order comes into force. It may be said that *Moule v. Groenigs* is cited, which was a decision upon that proviso, but, as no particulars of that case are given, we are left to pursue our enquiries elsewhere. Mr. Bewes expresses a consciousness of omissions in his book. We hope that he will take the further step of supplying them in any future edition.

THE LAW MAGAZINE AND REVIEW.

No. CCXCII.—MAY, 1894.

I.—THE TWELFTH CENTURY, THE AGE OF SCIENTIFIC JUDICIAL PROCEDURE.

I.

MAGISTER RICARDUS ANGLICUS, THE PIONEER OF
SCIENTIFIC JUDICIAL PROCEDURE IN THE TWELFTH
CENTURY.

THE twelfth century may be aptly designated the Age of Judicial Procedure, inasmuch as that century has been rendered memorable by the revival of the scientific study of Judicial Procedure, which had been neglected during the long night of the Dark Ages, that followed the dissolution of the Roman Empire of the West. It is, however, not known for certain whether Irnerius, who kindled afresh the lamp of learning in the Law School of Bologna, and thereby earned for himself the title of *Lucerna Juris*, when he introduced during the first decade of the twelfth century a novel method of expounding the Justinianean Law Books, a portion of which had been brought from Ravenna to Bologna, left behind him any treatise on Procedure, but none has come down to our time. Bulgarus, however, the Chrysostom (*Os aureum*), as he was termed, of the new School of the Gloss-Writers (*Glossatores*), and the most famous of the pupils of Irnerius, composed a short treatise, *De Judiciis*, which he dedicated to Cardinal Aymericus, who died A.D. 1148. It is probable, therefore,

that we shall be justified in saying that the earliest treatise on Civil Procedure, emanating from the Law School of Bologna, was composed by Bulgarus, who died A.D. 1166. The history of this treatise is both singular and interesting, and its renown has been furthered by the blunder of a certain Nicolaus Rhodius, of Kamberg, who edited it at Mayence* in the sixteenth century from a MS., which contained a remarkable work by Placentinus, entitled *De Varietate Actionum*, and several other treatises, which he supposed to be a continuation of that work. The researches, however, of F. C. von Savigny have established the fact that the first two chapters of the volume edited by Rhodius, contain the whole of the treatise of Placentinus, and that the short treatise, which forms the third chapter of the volume, is not part of the original work of Placentinus, but is the treatise, *De Judiciis*, of Bulgarus, of whom Placentinus is with good reason believed to have been a pupil. The treatise of Bulgarus, which F. C. von Savigny has pronounced to be the most ancient work extant of the school of the Gloss-Writers, has been edited by Professor Agathon Wunderlich in his *Anecdota, quæ processum civilem spectant*, published at Göttingen in 1841.

Placentinus, who derived his name from his native city of Placentia, was not popular amongst his brother-professors at Bologna, and the mantle of Bulgarus appears to have fallen on the shoulders of Johannes Bassianus, the author of the celebrated *Arbor Actionum*, whose short treatise on procedure, known as the *Summa, Quicunque Vult*, in which he combats an opinion of Placentinus, has been thought worthy of a place in the Appendix to the fifth volume of F. C. von Savigny's magistral work on the "History of the

* *Placentini Juris-consulti vetustissimi de varietate actionum libri sex . . . cum Præfat. Nic. Rhodii. Mogunt. anno MDXXX.—ex adibus Joannis Scheffer mense Febr. anno MDXXX.*

Roman Law in the Middle Ages,"* published at Heidelberg in 1829.

It would seem that the *Summa* of Johannes Bassianus maintained its great repute in the Law School of Bologna, as the master-treatise on Procedure, until the last decade of the twelfth century, when an Englishman, who had attained the high position of a *Magister Decretorum*, initiated a more scientific method of treating the subject of Procedure, having access to authorities, which either were not in existence when Johannes Bassianus composed his *Summa*, or were not accessible to him for the purpose of consultation. This Englishman's memory has been kept alive by a notice of his work, which dates back to the early years of the thirteenth century, when his laurels were still green at Bologna, and when Tancredus, a Canon of the Cathedral Church of Bologna and a pupil of Azo, so well known to English jurists, was, so to say, director of the studies of the Law School, and was called upon by his colleagues, whom he addresses as "*Carissimi Socii*," to draw up a treatise on Judicial Procedure for their use and guidance. Tancredus complied with their request, and it is to the treatise composed by him on this occasion, somewhere about A.D. 1215, that we are indebted for our knowledge of the distinguished career of Magister Ricardus at Bologna. The treatise of Tancredus is of great historical value in the present day, and it has been ably edited by Professor Frederic Bergmann at Göttingen in 1842.†

Tancredus commences his treatise by observing that he has undertaken a work of an arduous nature, which may be useful to his contemporaries and to posterity, and which Ricardus Anglicus has been the first to treat in the manner

* *Geschichte des Römischen Rechts im Mittelalter*. Von FRIEDRICH CARL VON SAVIGNY. Heidelberg. 1829.

† *Pillii, Tancredi, Gratia Libri de Judiciorum Ordine*. Edidit FRIDERICUS BERGMANN, *Juris-consultus*. Gottingæ. 1842.

in which he proposes to treat the same subject, namely, in the manner of a compilation, in which passages from the Laws and the Canons will be cited in illustration of each paragraph. It is in reliance on the testimony of Tancredus, who was afterwards nominated by Pope Honorius III. to the Archdeaconry of Bologna and was by a Letter Apostolic constituted Rector of the Law School (A.D. 1226), that Jurists have felt themselves justified in regarding Ricardus Anglicus as the Pioneer, who led the way in advance of the position in which Johannes Bassianus had left the study of Judicial Procedure. The statement of Tancredus on this subject has been thought worthy of transmission to posterity by Johannes Andreæ, no mean authority, who is described on his tombstone in the Church of the Dominicans at Bologna as "*notissimus orbe Johannes*," and who died during the Plague at Bologna in 1348. Johannes Andreæ completed two years before his death his *Additiones ad Durantis Speculum*, and it is in that learned work that he quotes the testimony of Tancredus to the pioneership of Ricardus, and to his having anticipated Pillius in his treatment of the subject of Judicial Procedure. Johannes Andreæ expresses his regret that he had never seen the treatise of Ricardus. Amongst English Jurists, Dr. Arthur Duck, an eminent member of the College of Advocates in London and a Fellow of All Souls College, Oxford, who published in the sixteenth century an able treatise "On the use and authority of the Civil Law of the Romans in the dominions of Christian Princes," * quotes Johannes Andreæ as his authority, for enumerating Ricardus Anglicus and Gulielmus de Drogheda amongst the Professors of Law at Oxford, and as the authors, the one of a *Summa*, and the other of a *Libellus de Ordine Judiciorum*.

* *De Usu et Autoritate Juris Civilis Romanorum in Dominiis Principum Christianorum.* Authore Authuro Duck, LL.D. Londini. MDCLIII.

It would be superfluous to quote any other medieval writers on Roman Law, as they do not supply any original information on the subject of the *Ordo Judiciarius* of Ricardus Anglicus, but the possible existence of a MS. of the work itself in the present day was made known in 1830 by the publication at Leipzig of a general catalogue of all the MSS. then extant in the various public libraries of Europe, compiled by Professor Gustavus Haenel, who has entered on his list of MSS. preserved in the Public Library at Douai in France, "*Ricardi Ordo Judiciarius*, membr. fol." This entry, although somewhat meagre, has had important consequences, as Professor Wunderlich of the University of Göttingen* rightly divined the authorship of this MS., which was at first attributed to Richard of Pisa, and in his work on Civil Procedure above-mentioned, suggested that any jurist, who should visit the Public Library at Douai, would do well to examine the MS. described in Professor Haenel's Catalogue as *Ricardi Ordo Judiciarius*, as by chance there might be hidden under that title the treatise of Ricardus Anglicus, who was the first to compose an *Ordo Judiciarius* according to the testimony of Tancredus.

It was upon this suggestion on the part of Professor Wunderlich, that Professor Charles Witte, of the University of Halle, undertook a journey to Douai in 1851, with the object of examining the manuscript which Professor Wunderlich had remarked in Professor Haenel's Catalogue, and he was so fortunate as to find in charge of the Public Library at Douai, M. Duthillœul, the erudite librarian, who had meanwhile completed a descriptive catalogue of all the MSS., which had been printed at the expense of the municipality of Douai, and to which a scientific account of the chief medieval law-treatises preserved in the Library had been appended by M. Tailliar, Conseiller à la Cour Royale de Douai. Both of these

* *Anecdota, quæ processum civilem spectant. Gottingæ. MDCCCXLI.*

eminent men took the greatest interest in furthering the design of Professor Witte, who succeeded in deciphering the text of the Manuscript of Ricardus, which had been noticed in Professor Haenel's Catalogue, and made it known to the World of Letters through the Press at Halle, under the title of *Magistri Ricardi Anglici Ordo Judiciarius, ex Codice Duacensi, olim Aquicinctino, nunc primum editus per Carolum Witte, juris-consultum Halensem (Halis. C. E. M. Pfeffer, MDCCCLIII.)*.

Professor Witte has thus described the Manuscript:—
"Exhibet vero Codex Duacensis, olim Monasterii Aquicinctini (Anchin), membranaceus, nunc numero (580) insignitus, Ricardi Ordinem Judiciarium, octo foliis majoris formæ bipartitis, caractere gothico minutiore, scripturæque compendiis satis referto, sæculo, uti videtur XIII. ineunte exaratum. Innumera tamen, quæ summam librarii produnt barbariem, scripturæ vitia impediunt, quo minus Codicem vel autographum vel ab autographo putemus desumptum."

Professor Witte, having thus described the Douai Manuscript, which was formerly in the neighbouring monastery of Anchin, and which, upon the destruction of that monastery amidst the political troubles of France in the last years of the eighteenth century, found a home with many other MSS. in the Public Library of Douai, proceeds in his preface to give some account of the personality of Ricardus, and is tempted to repeat with some hesitation the story told by Pancirolus in his historical work, *De Claris Legum Interpretibus*, published at Venice in 1637.* This work had a great literary reputation, being the first of its kind, but it is notorious for its numerous errors, which F. C. von Savigny has declared to be little less than scandalous. It appears in this instance that Pancirolus, who was a native of Reggio,

* The latest edition of the work of Pancirolus has been published by Chr. G. Hoffmann, at Leipzig, 1721, under the original title, *De Claris Legum Interpretibus*.

and who died at Padua in 1599, having discovered that the surname of Ricardus was "Poor," which was Latinised as "Pauper," assumed that he had acquired that surname at Bologna from his poverty, and he has put in circulation the story that Ricardus was so poor when he first came to Bologna that he was obliged to be content with occupying a single chamber with two other students, and that they had only one scholastic hood (*capitium*) amongst them, which they used in turns, so that whilst one of them attended a professorial lecture his two chamber-fellows had to remain at home. Pancirolus goes on to say that he is puzzled to account for the fact that this same Ricardus, to whom the surname of *Pauper* stuck during his lifetime from the circumstance of his great poverty when he first came to Bologna, afterwards became Bishop of Chichester in England. Professor Witte also appears to have been somewhat perplexed by this story, which seems to have staggered Sarti likewise, who, on the authority of Pancirolus, repeats it in his work *De Claris Archigymnasii Bononiensis Professoribus*, published at Bologna in 1769.* Sarti, however, cautions his readers by observing that Pancirolus quotes no authority in support of his story. "*Nulla tamen veterum monumentorum fide subnixus.*" It is perhaps only fair towards Pancirolus to bear in mind that his work was published by his nephew, Octavius Pancirolus, 38 years after his uncle's death, and that we have no reason to believe that its contents were submitted to any revision on the part of his uncle before his death with the view of preparing it for publication. Pancirolus, however, seems to have been convinced that the funds at the disposal of Ricardus were very scanty, as he writes: "*Septennio Bononiæ juri operam dedit, admodum pauper.*"

* Published after his death by the Abate Mauro Fattorini from documents in the Archives of the Vatican by command of Pope Clement XIII.

We have no information which enables us to fix the precise time at which Ricardus commenced his residence in Bologna, but he had to reside seven years before he could be admitted to the *status* of a *Magister Decretorum*.* We know that the subject of Judicial Procedure did not at that time form any part of the ordinary course of Lectures, which were read in the Law School during the morning, and which were limited to the *Digestum Vetus* and the *Code*, and which towards the latter part of the twelfth century comprised the *Decretum* of Gratian. Passages selected from all these treatises are cited, *pro re nata*, in the *Ordo* of Ricardus, but in composing his *Ordo*, Ricardus had to range over a much wider field in search of authorities, and to those authorities we shall allude further on. Meanwhile, it is of importance to fix the time, if we can, at which Ricardus composed his *Ordo*. Unfortunately the legal document which Ricardus has inserted in his treatise with a view most probably of making known the epoch at which it was composed, in accordance with the general practice of medieval law-writers, has been mis-dated by the scribe of the Douai MS., who has inserted in that document the date of "*anno ab incarnatione Domini MCXX.*," which would be at least half a century before Ricardus was born. Professor Witte has suggested a slight correction of this date, and has proposed that we should read MCXC. (1190) in lieu of MCXX. A preferable solution, however, of this difficulty has been unexpectedly supplied by the discovery of an independent MS. of the *Ordo* of Ricardus in the Royal Library at Brussels by Sir Travers Twiss, the author of the present memoir, under circumstances which he must beg the reader's permission to narrate in the first person.

* There was, properly speaking, at this time no University at Bologna qualified to grant degrees in the faculties of Law and Medicine, &c., but only a School of Law, in which there were lecturers and pupils, *magistri et scholares*.

I was examining in the year 1885 a MS. of the Greek Paraphrase by Theophilus of the Institutes of Justinian, which is preserved in the Royal Library at Brussels, and is numbered (7020-21), with a view to ascertain if it gave any countenance to the modern system of dividing the chapters of the Third Book of the Latin text of the Institutes, when M. Charles Ruelens, the courteous Keeper of the MSS., whose recent death his friends most deeply deplore, brought to me a volume (No. 131-134) respecting which nothing was known whence it came, beyond the fact that it was marked with the stamp of the celebrated Burgundian Library. I undertook at once the task of verifying its contents, which are written in very small Italian characters, and my surprise was great, when I read the title prefixed to the treatise with which the volume commences. It was as follows :—“*Incipiunt Generalia quæ vulgo Brocarda dicuntur a Domino Otone composita, et eorumdem discordantium concordantia,*” each word being much abbreviated. On examining the text of this treatise I found to my great surprise that I had discovered a treatise, which had eluded the researches of F. C. von Savigny, namely, “the *Brocarda* of Otto of Pavia,” the pupil of Placentinus, and the master of Carolus de Tocco. Sarti, in his life of Damasus, a juris-consult of the thirteenth century, whose *Summa de Ordine Judiciario* has also a place in the Library of Douai, has spoken of the *Brocarda* of Otto Papiensis, and F. C. von Savigny has quoted in a note the words of Sarti, with the additional remark that “Sarti is in error in supposing that Otto ever composed *Brocarda*.” The volume, however, in the Royal Library of Brussels may contribute, it is to be hoped, to re-establish the credit of Sarti. The next succeeding folio of the MS. contains a portion of the *Summa* of Johannes Bassianus, the text of which differs in some respect from the text as printed in the Appendix to the fifth volume of F. C. von Savigny’s great work,

to which I have already alluded. There follow next in order various short treatises, severally thus described : "*Super articulo de Regulis Juris, et super libro Institutionum, et super Codice D. Justiniani cadunt sequentia scripta.*" This brings the reader to the 104th folio of the volume, the text of which commences thus : "*Incipit Ordo Judiciarius Magistri R.*" The treatise which follows this title occupies fourteen pages in double columns of seventy-four lines each, and concludes the volume. Being happily familiar with the text of Professor Witte's edition of the Douai MS. I had no difficulty in recognising at once the treatise as the *Ordo Judiciarius Magistri Ricardi Anglici*, and it at once occurred to me that I ought not to lose an opportunity of comparing the text of this newly discovered MS. with the text of the Douai MS., of which I had a print in London, and which Professor Witte, as already mentioned, has declared to be full of clerical errors. On enquiry, however, I learnt that I should have some difficulty in finding a competent expert at Brussels, who would have leisure to undertake to transcribe the MS.

Whilst I was in this difficulty M. Charles Ruelens came to my assistance in the kindest manner, and was so obliging as to send over the MS. to England. I have thus been enabled not merely to have the Burgundian text of the *Ordo* transcribed by a skilful expert, but to have the MS. itself autotyped by a process approved by my esteemed friend Dr. E. Maunde Thompson, the Principal Librarian of the British Museum, and an Honorary Fellow of University College, Oxford.

The result of this is that the Burgundian MS., although full of abbreviations, may be safely described as more free from clerical errors than the Douai MS., whilst the special document, to which I have called attention, as being mis-dated in the Douai MS. and for which Professor Witte has suggested a slight correction, exhibits a much more recent

date, namely, "*Anno ab Incarnatione Domini MCXCVI.*," that is A.D. 1196 in the place of A.D. 1120. This fact brings the document, as suggested by Professor Witte, into accord with the practice of medieval Jurists, who were accustomed to insert in their works one or more legal documents so dated as to reveal the time at which the work was commenced or completed, and of which practice the *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, ascribed to Ranulf de Glanville, the illustrious Justiciar of King Henry II. of England, is a notable instance. The date of A.D. 1196, which the Burgundian MS. exhibits in the section of the MS. which is headed in Professor Witte's edition "*De Sententiis*," is in harmony with the statement of Tancredus, that Ricardus anticipated Pillius, and was the first to draw up a Treatise on Procedure, in which each paragraph is supported by a passage from a Law or from a Canon.

The evidence of Tancredus on this point of priority is valuable, for Tancredus is said to have attended when young the lectures of Pillius on Civil Law at the same time with Ricardus, and must have had a personal knowledge of the mutual relations between Pillius and his English pupil. Pillius was in fact well-known in England in the latter part of the twelfth century, having been the advocate of the monks of Canterbury in an Appeal made by them to Pope Urban III. at Verona, in 1187, against Archbishop Baldwin of Canterbury. Peter of Blois, Archdeacon of London, was the advocate of the Archbishop on that occasion, and an account of the Appeal has been preserved in the Chronicle of Gervasius Dorobornensis, which is printed in the collection of *Historiæ Anglicanæ Scriptores Decem*, edited by Sir Roger Twysden, London, 1652, p. 1497. The case on the other hand of the monks of Canterbury, as drawn up by a Civilian, is amongst the *Epistolæ Cantuarienses*, p. 520, which have been edited for the Master of the Rolls by Dr. William Stubbs, now Lord

Bishop of Oxford, from a MS. in the Archi-episcopal Library at Lambeth. It is remarkable that neither Benedictus Abbas, nor Roger de Hoveden make any mention of this important Appeal in their respective Chronicles. Herbert Pauper, the elder brother of Ricardus, was at that time Archdeacon of Canterbury, which circumstance may account for his younger brother attending the lectures of the famous advocate Pillius, who gave a practical lecture on the conduct of causes every Saturday. A collection of these lectures, which were termed *Quæstiones Sabbatinæ*,* is extant in the present day. With regard to the Archdeacon himself, he had been advanced to the see of Salisbury sometime before Ricardus returned to England.

We may pause here for a moment in order to appreciate more clearly the personality of Ricardus, as we have alluded to his elder brother Herbert. They were the sons of Richard of Ilchester, whom Professor Stubbs, now Lord Bishop of Oxford, describes in his *Constitutional History of England*† as commencing his career as a clerk in the Curia Regis and in the Exchequer from the beginning of the reign of Henry II., and as becoming Archdeacon of Poitiers, before 1164, and as having been made in 1174 Bishop of Winchester, in which city the King's treasure was preserved. We find him mentioned as Bishop of Winchester in the *Dialogus de Scaccario*,‡ and as sitting in the Exchequer on the right hand of the President, and as paying great attention to the computations. We know also from other sources that he was one of the confidential advisers of King Henry II., and was, conjointly with John of Oxford,

* F. C. von Savigny states that there are several printed editions of the *Quæstiones Sabbatinæ* of Pillius, the text of which is in perfect harmony with the MSS.

† Library Edition, 8vo., Vol. 1., Oxford, at the Clarendon Press, 1880, note on p. 529, ch. xii. Pipe Roll, pp. 30, 31, 98.

‡ Drawn up by Richard Fitz-Nigel, Bishop of London, and great nephew of Bp. Roger, of Salisbury, and preserved in the Red Book of the Exchequer.

subsequently Bishop of Norwich, Secretary to the Embassy which the King sent to Pope Alexander III. after the death of Archbishop Becket. Further, he was constantly employed as a Justice Itinerant, or as a Baron of the Exchequer, and was for two years Justiciar of Normandy. His sons, however, seem to have laboured under the disadvantage of having been born after their father had received the tonsure, as they had to obtain dispensations from Rome, "*ob defectum natalium*," before they could be advanced, the one to a Bishopric, and the other to a Deanery. Each of them had the *cognomen* of Pauper, but that strange *cognomen* belonged peculiarly to the family of the great Roger, Bishop of Salisbury, the Justiciar of England in the reign of King Henry I.

There can be little doubt that Richard of Ilchester, Bishop of Winchester, was not a poor man, when he died, on 21st December, 1188. His eldest son, Herbert, was at the time of his father's death Bishop of Salisbury, and he had been previously elected by the Canons of Lincoln during his father's life-time, in 1186, to the Bishopric of Lincoln, but King Henry II. on that occasion refused to approve his election because he was sufficiently rich.* With a father and a brother so circumstanced we can hardly believe the story that Ricardus was in such poverty as a student at Bologna that he and his two chamber-fellows were obliged to content themselves with a single scholastic hood (*capitium*), which each wore in his turn to enable him to attend a Professor's lecture. Their student life may have been peculiar, but if it is permissible to conjecture the reason of any such eccentric attendance on their part at the Professorial Lectures, the two absent members of the triad, who remained at home, were probably engaged, the one in dictating passages from MSS. to be inserted in the *Ordo*, and the other in writing them down,

* *Benedictus Abbas*, Rolls Ser., s.a. 1186.

for there can be little doubt that the scribes of MSS. in the twelfth century wrote from dictation, and that the variations of spelling in versions of the same treatise which are so remarkable in MSS. of the twelfth and thirteenth centuries, are attributable to the fact that the scribes trusted to their ears and not to their eyes in the matter of orthography.

This conjecture, if there be any substratum of fact in the story of Pancirolus, may be said to derive some colourable support from the circumstance that the text of the Justinianean Law Books, which are cited by Ricardus in support of each paragraph, is of a kind which was in use at Bologna before the text was revised in pursuance of the Gloss of Accursius. Professor Witte has pointed out a special passage in the section of the *Ordo* of Ricardus, to which is prefixed the title *De Confessis*, in which Ricardus, in illustration of the fifth paragraph, has cited an *Authentica*, which Accursius has rejected as spurious. The Burgundian MS. agrees with the Douai MS. in citing the same *Authentica*, so that there is little doubt that Ricardus had before him a text of the *Code* (Lib. VII., Tit. 59) with an *Authentica* appended to it of a totally different tenor from that which has come down to us in the present day under the authority of Accursius, and is found in the most approved editions of the *Corpus Juris Civilis*, for instance, in the folio edition edited by Simon van Leeuwen, Amstelodami, 1603, and the octavo edition from the Elzevir press, Amstelodami, 1681, which I have before me at the present moment. In fact, I have looked very carefully over the various passages cited by Ricardus from the Justinianean Law Books, and have compared them with the corresponding passages in the two editions above-mentioned, and the general result is to confirm the opinion of Cujacius, that there were MSS. in existence at Bologna in the twelfth century which had been copied from original MSS. other than the Florentine MS., and which

may supply us with many readings. The passage which we are discussing is signally confirmatory of this opinion on the part of Cujacius, for Magister Vacarius, as we learn from a note to Professor Wenck's recondite treatise, entitled *Magister Vacarius, Primus Juris Romani in Anglia Professor*,* cites this identical passage from the Code with a different *Authentica* on the margin, which *Authentica*, Professor Wenck observes, is not found in the printed editions of the *Code*. I may add that the extracts made by the scribe of the Burgundian MS. from the Justinianean Law Books are fuller and more complete than the corresponding passages in the Douai MS. It must be borne in mind that during the twelfth century every law treatise in use at Bologna was in MS., and that there were at that time no *petiarii*, nor *stationarii*, nor other scholastic officers, whose duty it was, as at a later period, to prepare for the use of the students MSS., of which they had to guarantee the authenticity of the text. The MSS. of the twelfth century, however, have for the most part disappeared, and it is only by a happy accident that a MS. has here and there been preserved, as in the present instance, which indirectly confirms the opinion of Cujacius and of F. C. von Savigny that there were at Bologna in the twelfth century original MSS. of the Justinianean Law Books, which contained a text known as the *litera vetus et communis*, not to be confounded with a subsequent text known as the *litera vulgata*, or as the *litera Bononiensis*, as distinguished from the *litera Pisana*.

Ricardus, for instance, has cited passages from the *Digestum Vetus*, the *Infortiatum*, and the *Digestum Novum*, but he makes no citation from the *Tres Partes*. He cites from the first nine Books of the *Code*, but he makes no citation from the last three Books. He cites various

* *Magister Vacarius, Primus Juris Romani in Anglia Professor, studiis Caroli F. Ch. Wenck, Jur. Doct. Lipsiæ, sumptibus Hartmanni, MDCCCXX., p. 291, No. 355.*

Authentica inserted in the *Code*, and he cites ten passages from the *Institutes*. It may be presumed in the case of the Burgundian MS. that the scribe had a better opportunity for making extracts from the Justinianean Law Books than the scribe of the Douai MS., or that he was himself anxious to have a more complete text of the passages cited by Ricardus from those Books. All the Books above-mentioned were generally accessible to students in the twelfth century in the Professorial Lecture Halls, as we learn from Odofredus that MSS. of all the sources of law which we have enumerated above were brought from Ravenna to Bologna in the time of Irnerius. But Ricardus has also invoked passages from the first and second parts of the *Decretum* of Gratian, and several Decretal Letters of a later origin, which are found in the *Compilatio Prima* of Bernhard of Pavia (1191), or in the *Compilatio Secunda*, which Gilbert and Alanus, both English Canonists, assisted in compiling. There is, however, a difficulty in supposing that Ricardus had recourse to the *Compilatio Secunda* itself, as it was not completed before the year 1210, and it has been thought more probable that he had access to the Appendix of the Third Lateran Council, and was thereby enabled to consult a text of an earlier date than the *Compilatio Secunda*. Professor Witte is of this opinion, and the presumption founded on the election of Ricardus to the Deanery of Salisbury in 1198 and his subsequent residence in England, is strongly in its favour.

II.

THE PSEUDO-ULPIAN (*ULPIANUS DE EDENDO*). THE LATTER DAYS OF RICARDUS ANGLICUS.

The inordinate growth of the system of Appeals to the Roman Curia, against which Saint Bernard, Abbot of Clairvaux, addressed in the twelfth century an earnest

remonstrance to Pope Eugenius the Third, his ancient pupil, in his treatise, *De Consideratione* (Lib. III., ch. 2), was one of the principal causes of the general revival in Europe of the Scientific study of Judicial Procedure. It had been found in the preceding century that the advocates who had been trained in the traditions of the ancient Roman Procedure, which had been maintained at Rome and in the Law Schools of certain cities of Northern Italy, had a signal advantage over other advocates in the conduct of Appeals before the Roman Curia, but their method was somewhat antiquated, being based, so to say, on the Theodosian Law System. That system was still in *viridi observantia* on the North side of the Alps in the middle of the twelfth century, and of this circumstance we have a remarkable proof in a treatise generally known as *Ulpianus de Edendo*, or the Pseudo-Ulpianus. The forgotten text of this treatise, which now passes for the most part under one or other of those names, was discovered by Professor Hugo, of Göttingen, in the year 1790, in an anonymous MS. in the British Museum, which is entered in the Harleian Collection, Vol. III., p. 605, No. 2,355, under the title of *Tractatus Ulpiani Juris Consulti Romani de edendis actionibus com notis quibusdam marginalibus*. Its discovery was at once announced to the lettered world in the *Civilistisches Magazin*, Tom. I., pp. 377—380, and the text was soon afterwards edited, in a somewhat imperfect state, by Professors Meywerth and Spangenberg, of Göttingen, as the text of a lost treatise of the great Roman Juris-consult, and this misconception, which had its origin in the circumstance that the words "*Ulpianus de Edendo*" are written on the margin of the Harleian MS. near the commencement of the treatise, was only dissipated by the discovery near the end of the treatise of a brief allusion to the *Code* of Justinian, and of an equally brief allusion to the *Decreta* (of Gratian) on the subject of Appeals. The latter reference

was at once conclusive that the treatise was composed sometime after the year 1152. The mistake had, however, operated meanwhile to make the treatise famous, and to encourage a search for further MSS., and the result has been that ten or more MSS., none of them precisely identical, have been found in various archives of Europe, all of them being in localities North of the Alps.

In the meantime the authorship of this Treatise is a riddle which has perplexed the most eminent Juris-consults of Europe. Four MSS. are known to exist in England, three of which are in the British Museum,* and the fourth is in the Library of Holkham Hall, the seat of the representative of Lord Chief Justice Coke. One MS. exists at the Hague, a second MS. at Leyden, and a third at Trèves in the Rhenish Provinces of Prussia, and the text of these two latter MSS. has been edited by Professor Warnkœnig at Ghent. A MS. is also preserved in the National Library of Paris, which formerly belonged to the Collection of the Minister of State, Colbert, and the text of this manuscript was edited, in 1837, by the direction of Professor A. P. Royer Collard, who is described as "*In Consultissima Juris Facultate Parisiensi antecessor.*" Three other MSS. exist in France, one at Châlons-sur-Marne, a second at Amiens, and a third at Lyons, which will be mentioned again below. Finally, an excellent edition of this treatise, with copious notes and a critical preface, explanatory of the circumstances under which eight of the MSS. have been discovered, has been edited at Leipzig

* An account of these MSS., two of which have been edited by the late C. Purton Cooper, Esq., Q.C., will be found in the Catalogue of the Library of Lincoln's Inn, and also in Professor Haenel's edition mentioned below.

† *Incerti Auctoris Ordo Judiciorum (Ulpianus de Edendo) e Codicibus et editionibus emendavit, glossis auxit, annotatione critica instruxit* GUSTAVUS HAENEL, Lipsiensis. Lipsiæ, 1838, sumptibus Hinrichsii.

by Professor Gustavus Haenel, the same Professor who first noted down in his Catalogue the *Ordo Judiciarius* of Ricardus Anglicus, and so led to its discovery at Douai, and he inclines to the opinion that the False Ulpianus is the work of Vacarius himself, who was induced by Archbishop Theobald of Canterbury to abandon the Schools of Bologna, and to teach the Civil Law in the Schools of Oxford. Professor M. von Bethmann-Holweg of the University of Bonn favours this view, and I may add that Professor Hugo, who first discovered the treatise, regarded it as the work of a Belgian Jurist or of an Englishman. None of the above MSS., with one exception, have any title or heading prefixed to them, and this exception is found in the case of the Lyons MS., of which M. Caillemer, Dean of the Faculty of Law at Lyons, has given an account in a learned treatise, *Le Droit Civil dans les Provinces Anglo-Normandes au XII^e. Siècle*, published at Caen in 1883. M. Caillemer states that the MS., which is in the possession of M. Gaspard Bellin, a Judge of the Civil Tribunal of Lyons, is in a hand of the twelfth century, and that there is to it the following heading:—

"In subjecto opere continetur ordo et forma causarum sive judiciorum, scilicet quomodo secundum juris equitatem tractari et terminari debeant."

My object in referring to the False Ulpianus is to appeal to its contents as evidence that the *Ordo Judiciarius* of Ricardus Anglicus constituted a new departure in the scientific study of Judicial Procedure, and introduced the point of the wedge, so to say, of the Justinianean Law Procedure into countries in which certain traditions of the Theodosian Law Procedure were still maintained. For instance, in England we find in a matter of Procedure a tradition of the Theodosian Law System maintained in a law of King Henry I., of which a record has been preserved

by Canciani,* and which F. C. von Savigny has cited as evidence of certain traditions of the Roman Law being preserved in England. "*Lex 33, Henrici I. de Libro Theodosianæ Legis injuste victus infra tres menses repareret causam, quod si neglexerit, sententia collata perseveret.*" F. C. von Savigny also cites from the *Breviarium Aniani* a passage of the Theodosian Code (Lib. VI., *de Reparat. Appell.* 11, 31), which is confirmatory of Canciani's reference as above, and the existence of this Law in England in the reign of Henry I. makes strongly against the conjecture that the Pseudo-Ulpianus is the work of an English Jurist, for the Pseudo-Ulpianus does not accord with the Theodosian Law on the subject of the "*induciæ*" to be allowed to an appellant. I may add in further illustration of the value of the "False Ulpianus," as supplying evidence that Ricardus Anglicus initiated a new departure in the scientific study of Judicial Procedure, that the author of the False Ulpianus still recognised the two-fold mode of commencing an action, either by an oral summons before witnesses, or by a writ. His words are, "*Editur autem actio vel per denuntiationem præsentibus testibus, vel per scripturam, id est, libellum conventionis.*" On the other hand, Ricardus Anglicus commences his treatise by explaining the various ways of commencing an action according to the ancient practice, and concludes with the paragraph "*sed hodie oportet in scriptis fieri,*" in support of which he cites an *Authentica* of the Emperor Justinian appended to the Code (Liber III., Tit. ix., *De Litis Contestatione*) commencing "*Offeratur ei libellus, qui vocatur ad iudicium, et deinde præbitis sportulis et data fidejussione, xx. dierum gaudeat induciis, in quibus deliberet, cedat vel contendat, vel alium petat iudicem associari, vel recuset, nisi sit ille, quem ipse jam alio recusato, petiit,*" and ending

* CINCIANI, *Barbarorum Leges Antiquæ cum notis et glossariis*. 5 vols. folio, Venice, 1781-92, vol. IV., p. 379.

"*Litis ergo contestatio contra hoc indultum habita pro nihilo est.*"

It may be presumed that in the twelfth century the Jurists of Bologna considered the oral summons to have fallen into desuetude, as Johannes Bassianus does not recognise it in his *Summa, Quicunque Vult*, which we have mentioned above, and a saying of Bulgarus is on record in regard to the "*juramentum propter calumniam*," viz., "*Quod juretur, lege cavetur, in desuetudine tamen habetur.*" On the other hand, the application of the principle of desuetude was not equally, if at all, admitted in England, in like manner as it was in countries where the Roman Law was the foundation of the Common Law.* Ricardus has accordingly here quoted an *Authentica* of Justinian, *Offeratur ei libellus, &c.*, which may be taken to have abrogated the oral summons. In England the non-recognition of desuetude has been explicitly upheld by the King's Courts even so late as in the nineteenth century, when the defendant in a case of murder challenged the appellant to single combat in the Court of the King's Bench, and the Chief Justice of England, Lord Ellenborough, felt himself constrained to admit that the Wager of Battle was still the Law of England†, being unrepealed by Statute, and he decided that the battle should take place unless the Appellant, having considered this decision of the Court, should make no further prayer, that is, should not ask the Court to name a day on which the judicial combat should take place. The Appellant took the hint and made no further prayer, and so judgment was stayed with the consent

* The Common Law of the Roman Empire on the subject of desuetude is well expressed in the *Digest*, Liber I., Tit. iii., fr. 32, 91. *Quare rectissime etiam illud receptum est, ut leges non solum suffragio legislatoris, sed etiam tacito consensu omnium per desuetudinem abrogentur.*

† *Ashford v. Thornton*, Barnewall and Alderson's Reports, Vol. I., p. 405, A.D. 1818.

of both parties. A law was shortly afterwards enacted by Parliament to abrogate the Law respecting the Wager of Battle.

We have sufficiently trespassed on the patience of our readers by commenting on passages in a MS. of which they have not the text before them. We regret to say that we see no probability at present of the text of the Burgundian MS. being printed, and we may even be asked what is to be gained for Science by publishing a treatise of a primitive character, so to say, while subsequent treatises are accessible in print, which contain the substance of all that is found in the treatise of Ricardus and a good deal more, and the additional matter represents a more mature stage of the subjects discussed. The answer is not far to seek, if it be admitted that the real growth of humanity is to be traced in the history of Nations, and their institutions, and that the simplicity of early forms and ideas is the best introduction to the principles upon which institutions rest, and gives us most help to analyse and solve the complications of form, which institutions assume in the more advanced stages of their historic life. I may mention by way of illustrating my argument the *Ordo Judiciarius* of Tancredus, to whose Rectorship of the Law School of Bologna, A.D. 1226, allusion has already been made, and who has dealt with the subject of Procedure from a standpoint much in advance of that occupied by Ricardus, although the interval of time that separates the completion of the two works barely exceeds the span of life that is supposed to measure the existence of a single generation of men. But a counter-interrogatory may be suggested. Is it nothing to be able to follow the education of the world in its progress from the simplicity of early forms and ideas to the complications of more fully developed institutions, and to be assured of the soundness of the principles on which the institutions are based? Is it

nothing to be able by the aid of two such treatises as those of Ricardus and of Tancredus to measure the progress made in Western Christendom in the course of less than half-a-century in raising the administration of Justice into a science by organising an intelligent and rational system of Procedure so as to render the formation of a scientific Judicature not merely a possibility but a reasonable certainty? Yet such was the task which Ricardus Anglicus initiated, and of which Tancredus may be said to have completed the academic stage, having before his eyes the labours of Ricardus and not disdaining to utilise the stepping stones,* which Ricardus had been the first to set up to mark the way.

Gehr Justizrath Dr. J. F. von Schulte, Professor of Canon Law in the University of Bonn, in his *History of the Sources and Literature of the Canon Law*,† gives some particulars of the early literary career of Ricardus. He considers him to have completed a treatise on the *Decretum* of Gratian before his return to England, and a MS. of that treatise is preserved at the present time in the Public Library of Douai. It is entitled *Distinctiones super Decreto*, and the opening words are "*Patres Nostri omnes sub nube fuerunt*," after which the author goes on to say that he has previously composed a useful and necessary Order of Procedure. Johannes Andreæ takes notice of this work in his *Additiones ad Durantis Speculum*. Professor von Schulte attributes also to Ricardus a treatise entitled *Glossæ super Compilationem Primam*, and a fourth treatise entitled *Casus Decretalium* and he is disposed to assign to all these treatises a later date than will quite accord with the known history of Ricardus,

* Professor Witte has noted one hundred and twenty-six instances in the text of the *Ordo* of Tancredus, as edited by Bergmann, in which Tancredus has developed a topic of which Ricardus has inaugurated the discussion.

† *Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian bis auf Papst Gregor IX.* Stuttgart. Verlag von Ferdinand Enke. 1875.

as it may be gathered from English records of which the credit cannot be impeached. For instance, the Professor holds that the *Ordo Judiciarius* was not written before 1201, and the *Distinctiones super Decreto* not before 1208 or 1210, and he grounds this opinion on the assumption that Ricardus has in one or two instances quoted Decretals which are recorded in Compilations, which were not in existence before the earliest of those dates, but as there were earlier sources to which Ricardus may have had access for this information, this argument is not conclusive, more especially as Ricardus does not cite any Compilation of Decretal Letters by number or by name, whilst there are good reasons for believing, as already stated, that he had access to the Decretals of Pope Alexander III. as collected in the Appendix to the Proceedings of the Lateran Council of 1179. Further we cannot admit that Professor von Schulte is warranted in assigning so late a date to the *Distinctiones super Decreto* as 1208 or 1210, for there is reliable evidence that Ricardus was elected to the Deanery of Sarum in England soon after it had become vacant in 1198 upon the consecration of Eustace, Dean of Sarum, to the Bishopric of Ely, which event took place on the 8th of May in that year.* From documents entered in the *Registrum Rubrum* and in the *Liber Evidentiarius* of the Dean and Chapter of Sarum we may conclude with reasonable certainty that Ricardus, as Dean of Sarum, took part in an Act of the Dean and Chapter of Sarum on 4th July, 1199. From documents entered in the same Red Register and likewise in the *Liber Evidentiarius* it would appear that Dean Richard took part in two similar Acts in the year 1200, and for a third time

* Ralph de Diceto, Dean of St. Paul's, is our authority for this statement; Rolls Series, Vol. 11, p. 159. Bishop Eustace, who, as Dean of Sarum, had acted as the King's Vice-Chancellor, now became King Richard's Chancellor.

in a similar Act of the Chapter in the year 1201, and for a fourth time in a similar Act of the Chapter on 9th July, 1202. It is possible that Ricardus may have paid visits to Bologna after his election to the Deanery of Sarum, but that he should have resumed his residence at Bologna after that event and continued his labours on his *Ordo Judiciarius* with the assistance of two chamber-fellows is not a reasonable supposition. Besides, we have the Declaration of Tancredus that Ricardus anticipated Pillius, whereas the work of Pillius speaks for itself. It is not a treatise of any great length, and it is divided into three parts, whilst it appears from a passage in the second part that Pillius was then engaged in considering how to deal with a ruling of Pope Celestine III. shortly after that Pontiff's death, which took place on 8th January, 1198. Further, he speaks of that Pontiff as of one recently deceased, and he makes no mention in his work of his successor, Pope Innocent III., probably the greatest of all the Pontiffs, and the most learned in Ecclesiastical Law, who occupied the Chair of St. Peter until 17th July, 1216.

The following circumstance seems to have influenced the judgment of Professor von Schulte in extending the duration of the Scholastic career of Ricardus to the year 1210, to wit, that the name of Ricardus, Dean of Sarum, occurs in certain entries in the Pontifical Register,* under the years 1205 and 1206. The first entry (No. 2646) is of the date 31st December, 1205, and contains a declaration that the election of Ricardus was invalid through some defect. The second entry (No. 2659) is a Dispensation granted by Pope Innocent III. on 14th January, 1206, to Ricardus as Dean of Sarum, "*ob defectum natalium*." There is no record in the *Liber Ruber* or in the *Liber Evidentiarius* of

* *Regesta Pontificum Romanorum ab anno post Christum natum MCXCVII^l. ad annum MCCCIV. edidit* AUG. POTTHAST. Berolini. 1873.

the Dean and Chapter of Sarum of any appeal on the part of the Chapter of Sarum against the election of Ricardus, and it is possible that the application to Rome may have been made by Ricardus himself *ex majori cautela*. However this may be, Professor von Schulte seems to have regarded these entries in the Pontifical Register as sufficient evidence that the election of Ricardus to the Deanery of Sarum took place in 1205, and assumes accordingly that he returned to England in that year.

How Ricardus was engaged during the early years of the disastrous reign of King John is not very clear, but we find him promoted to the Bishopric of Chichester in 1214, when he commenced an Episcopal career strongly in contrast with his *cognomen* of Pauper. The Cathedral of Chichester, the Episcopal Palace, together with the houses of the Dean and Canons, and the City itself, had all been destroyed by a terrible fire on 20th October, 1187, so that the new Bishop succeeded to what may be termed a "*damnosa hereditas*" in the year in which the Papal interdict against King John was relaxed. He seems to have maintained his fidelity to the King during the trying period of his reign which succeeded the day of Runnymede, and he was one of the executors named in King John's will. Further, on the accession of King Henry III., he appears to have sworn fealty at once to the Boy-King, as the name of R. Cicestrensis appears amongst the Prelates and Barons who were not committed to the French party, and who were present at the first re-issue of the Great Charter by King Henry III. in 1216.

Ricardus remained only three years at Chichester, as upon the unexpected death of his elder brother, Bishop Herbert, in 1217, the Canons of Salisbury elected him as his brother's successor, having appreciated his worth when he was formerly their Dean. Here, indeed, he left his mark by dismantling the old Cathedral, which was

inconveniently situated within the precincts of the Royal Castle, and by building a new Cathedral in a more convenient locality, where a new city has grown up around it. A full account of the foundation of the new Cathedral, A.D. 1224, when King Henry III. laid the first stone with great solemnity, is recorded in the *Liber Niger* of the Corporation of the present city of Salisbury, of which an extract has been printed in the *Sarum Charters*, Rolls Series, p. 269. The Bishop had previously drawn up, in the year 1223, a new body of Constitutions for the government of the Canons, which are printed in Wilkins' *Concilia*, Vol. I., p. 572, and likewise in the volume of the *Sarum Charters* above-mentioned.

Under what circumstances Ricardus was induced to resign the See of Salisbury before the new Cathedral was completed does not appear, but he provided an annual sum towards its completion at the time when he was translated to the See of Durham. It is possible that he may have been induced to accept the charge of the important Bishopric of Durham in consequence of the state of confusion and indebtedness in which the See had been left by the previous Bishop, Richard de Marisco, who had embarrassed it with a debt of 40,000 marks, and with a legacy of ill-feeling resulting from a bitter quarrel between himself and the monks. On the other hand, it is highly probable that Ricardus undertook the onerous charge of this very important See at the request of the King himself, as the King had refused to allow the monks to elect a member of their own body as successor to Richard de Marisco,* and he was anxious that the See should be filled by a bishop, of whose fidelity to himself

* King Henry III. had in the month of January, 1227, emancipated himself from the tutelage of Peter des Roches, and had declared in the following month of February, at the Council of Oxford, his intention to regulate the affairs of the Realm personally. He was supported by the Justiciar, Hubert de Burgh.

personally he had no doubt. However this may be, Ricardus Pauper, in spite of his *cognomen*, was approved by all parties, and by his skilful management relieved the See within a few years of its heavy debt. He seems to have possessed, like his ancestor, the great Bishop Roger of Salisbury, a genius for finance.

Ricardus may be said to have occupied the See of Durham during ten years with signal advantage to the diocese, but we must refrain from entering on so large a subject as the details of his wise administration of his diocese and his beneficent career in the North of England. We may mention, however, that the reminiscences of his scholastic life at Bologna most probably influenced the counsel which he gave to William, the Archdeacon of Durham, who, after the Bishop's death, made a provision for establishing a Hall within the Royal Borough of Oxford for the residence of ten or twelve Masters of Arts. That Hall was destined to become the *nucleus* of the Collegiate system at Oxford, and was known in after-time as the Great Hall of the University, and in the present day is known as University College.* The Bishop's last act of Public duty appears to have been his attendance at the Common Council of the Realm, summoned by King Henry III. to meet at Westminster on 13th January, 1237, in which Council the Grant to the King of a thirtieth of their moveables was made by the Archbishops, Bishops, and Clergy, subject to a careful scheme for the assessment and collection of the Grant, in return for which the King confirmed all the Charters which he had signed during his

* William, Archdeacon of Durham and Rector of Wearmouth, had been elected to the Archbishopric of Rouen, and having journeyed to Rome to obtain the confirmation of his election by Pope Gregory IX., in which he succeeded, had arrived at Rouen on his return journey, where he was taken ill and died; so that little is known of him at Oxford, except the fact of his endowment for ten or twelve resident Masters of Arts.

minority. Professor Stubbs, now Lord Bishop of Oxford, considers the scheme of assessment and collection devised on this occasion to afford a valuable illustration of the growth of Constitutional life in England, and I may add that the tendency of all the Public acts, in which Bishop Richard took part, was to further the growth of that life. But the end of his useful career was near at hand. He retired to the hamlet of Tarente [Tarrant] in Dorsetshire, which was in his ancient Diocese of Sarum, and where he had prepared for himself, in advance, a place of sepulture, and died there on 15th April, 1237, according to Matthew Paris, who describes him in his *Chronica Majora* as *Vir eximie sanctitatis et profundæ scientiæ*, and commemorates him in his *Historia Anglorum* for having strenuously ruled three Episcopal Churches in succession, to wit, Chichester, Salisbury, and Durham. He did not, however, die without leaving behind him a record of himself in the language of his own countrymen, for he is reputed to have been born in the district now known as Tarrant-Crawford, which is contiguous to the parish of Tarrant-Kaines, of which latter parish he had acquired both the patronage and the parsonage in the year 1225, whilst he was Bishop of Salisbury, by a grant from the Priory of Merton.

There is preserved in the British Museum amongst the volumes in the Cotton Collection, a Manuscript in a hand of the early thirteenth century, which is distinguished in the Catalogue as Titus D. XVIII. This manuscript contains a treatise composed in the Midland Dialect of the English Speech of that period, of which it is a rare and very precious example, and it has been edited for the Camden Society, in 1853, accompanied by a translation into the English language of the present day by Rev. James Morton, as No. 57 of the Society's Series. Further, the handwriting has been thought worthy of taking rank amongst

the photographic facsimiles recently published by the Palæographical Society, in whose second series, Part IV., four columns of the text have been awarded a place as No. 75, under the editorship of Dr. E. A. Bond and Dr. E. Maunde Thompson, the late and the present Principal Librarians of the British Museum. It is described in the latter work as "*The Ancren Riwele*," written for the instruction of three ladies, anchoresses or nuns of Tarente or Tarrant-Kaines, in Dorsetshire, followed by homilies, &c., in the same hand, and bound up with other later pieces. There is no doubt as to the authorship of this treatise, and we have contemporary evidence in the Deed of 1232, already mentioned, of which a copy is preserved in the Archives of the Dean and Chapter of Salisbury, that there was in the early thirteenth century a Nunnery at Tarrant, with which Bishop Richard was connected by the obligation of supplying the nuns with adequate provision from the fruits of the Church of Tarrant-Kaines,* and this circumstance will account for the interest which the Bishop took in the welfare of the nuns. It was for their edification that he composed the *Ancren Riwele*, which after his death became a Standard Book of Rules for the ladies of other Nunneries. Of this fact an apt illustration is forthcoming in the same Cotton Collection (Cleopatra C. VI.). A note in this MS., in a later hand of the thirteenth century, informs us that it was a gift to Legh Abbey, Devonshire, from Matilda de Clare, Countess of Hereford and of Gloucester, by whom Legh Abbey, originally founded for Austin Canons, had been converted into a Nunnery. This note speaks only of the Abbey to which a copy of the *Ancren Riwele* was presented by the Countess, but at that time the Nunnery of Tarrant had become, under the fostering hand of Queen Eleanor, to whose protection and

* *Sarum Charters*, Rolls Series, p. 169, s.a. 1225.

governance Bishop Richard had commended it before his death, the Abbey of Tarente, or Tarrant Abbey, which had in course of time other Abbeys subordinate to it. I do not, however, propose to pursue the fortunes of Tarrant Abbey beyond recording the fact that the Abbey and its Chapel have disappeared, whilst a Norman Church, which is supposed to have been outside the Abbey, is held to mark the locality, near which the remains of the Chapel, which Ricardus refounded, are to be looked for.

I have been informed by a learned antiquary of Tarrant-Kaines that two stone coffins, resting on the ancient pavement of a building, and covered by the ruins of a wall and other fragments of a building which had fallen over them and overwhelmed them, were found about forty years ago in the field which adjoins the Norman church, and which separates it from a large Abbey Barn. The upper slab of the smaller of those two coffins was supposed to have formed part of the coffin of Queen Joan, the daughter of King John of England and the wife of Alexander II., King of Scots, and it has been transferred to the Church, but the upper slab of the larger coffin, which was supposed to be the coffin of Bishop Richard Poore, still lies on the grass field, and there is nothing to suggest a "*siste viator*" to those who cross the field on foot, that they may mark well their steps, and tread lightly on the grave of the wise and good Bishop. Yet it is in this same Bishop Richard that we recognise in his youthful days the Englishman, Ricardus Anglicus, who had the high repute in the Law School of Bologna in the twelfth century of having led the way as a skilful pioneer in the scientific study of Judicial Procedure. And his recently discovered treatise supplies evidence to his countrymen of the present day, that the development of Scientific Jurisprudence in England before the days of Bracton was not the exclusive work of Anglo-Norman Jurists, but was a work in which a leading part was taken

by Ricardus Anglicus, the English *Magister Decretorum* of Bologna, who died Bishop of Durham, and was laid to rest in a now almost forgotten grave at Tarrant-Kaines, in his ancient Diocese of Sarum.

TRAVERS TWISS.

II.—BRITISH FINANCIAL ADMINISTRATION IN INDIA: THE CAUSE AND PROBABLE RESULTS OF OUR DIFFICULTIES.

I.—THE FINANCIAL ADMINISTRATION SINCE 1860.

WHEN a State enjoying a long period of peace begins to borrow money for discharging interest on previous loans, the action is generally interpreted as a premonitory sign of financial decadence, seeing that it reveals the inability of the Government to obtain the requisite funds from the ordinary sources of revenue, and leads to the conclusion that the financial reserves of that State are exhausted, save its power to borrow. That India has for some years past stood in this predicament there seems little reason to doubt when a review is taken of her financial administration during the last thirty-four years—that is, since her Government and her Legislature have been under the undivided control of a member of the British Cabinet. From such a review it will be seen that, shortly after the inauguration of the present *régime*, “an accumulated deficit of six millions occurred in three years; the permanent debt during the same period was increased by six and a-half millions; the serious and unprecedented course of increasing the burdens of the people in the middle of the year, had to be taken; the public works were in a great measure suspended; the income tax and the salt tax

were increased; the period was one of great trouble to the Empire and of anxiety to the Government" (Lord Mayo's *Budget Speech*, March, 1870). A few months later, and shortly before that much respected nobleman fell by the hand of a political assassin, he stated in a despatch to the Home Government:—"A feeling of discontent and dissatisfaction exists among every class on account of the increase of taxation that has for some years been going on; and the continuance of that feeling is a political danger the magnitude of which can hardly be over-estimated."

Lord Mayo was certainly no alarmist; his representations, therefore, led at once to the appointment of a Select Committee of the House of Commons to inquire into the finances of India; and although the proceedings of that Committee were unduly protracted by the unwillingness of the Government to furnish the necessary accounts and information, and were eventually interrupted by a dissolution of Parliament, a mass of valuable evidence was collected, disclosing a laxity in the administration and a reckless waste of public money, which would scarcely have been credible without such authentic and irrefragable evidence, and which certainly would not have been possible, but for the irresponsible system of government imposed on India. Millions and millions had, within a few years, been spent in ill-conceived and ill-constructed public works—the Godavery navigation scheme, the Orissa project, the Mutlah railway, the Madras Irrigation works, and numerous other unsound enterprises—with the result that the interest on the millions borrowed for the purpose became a permanent burden on the people of India, without any countervailing advantage whatever accruing to the country. The following short extract from the evidence given before the Indian Finance Committee by the officer specially deputed by the Government to defend its action

in the Department of Public Works, will give an idea of the way in which public money was expended :—

“ June, 1872. Question 6535.—You said that the Public Works Department had not a concrete existence. Is it an abstraction that can get money? Answer: I meant that they had not a concrete existence in the sense of controlling the expenditure.

“ 6536.—Then who controls it? The Government as a whole controls it. There is no person specially responsible to the public and to the Government for the operations of that Department.

“ 6537.—Now, we get it clear: this enormous expenditure is going on; it has gone on; it is going on this year to the extent of something like £40,000,000. You have recommended an expenditure of £70,000,000 in future public works, forty millions in canals, and thirty millions in railways, and yet you admit that there is no one in the slightest degree responsible for the manner in which that expenditure is carried out, no one on whom a Committee, for instance, could fasten the responsibility? I entirely admit that, as regards the general control of those great financial operations, there is no person who has that responsibility put on him, that should be.”

From the whole of the evidence given before the Indian Finance Committee, it was clearly seen that bankruptcy could be averted only by a complete reform in the financial administration, and the exercise of strict economy in the future; and this task was taken up with admirable zeal and ability by the Viceroy who succeeded Lord Mayo. But as soon as confidence began to be restored, new speculative schemes, involving very heavy expenditure, were started by the Indian Secretary of State, and, from 1876 to 1880, India paid her way by extensive borrowings. In 1885, while no danger of war threatened the country, the expenditure was suddenly increased again by upwards of

three millions, chiefly in connection with the Army, and the increase became larger and larger in subsequent years, the operations requiring the money being the annexation of Upper Burmah and the subjugation of the Tribal territories lying along the North-Western frontier of India.

Burmah, it was confidently asserted by the Government, could be conquered in a few months, and would, when annexed to our Indian Empire, soon add materially to its financial resources. As a matter of fact, nearly twenty millions have been taken from the Indian treasury to enable us partially to hold our conquest in Burmah; and the pacification of the country seems more remote now than it appeared to Lord Dufferin when he left India.

Then, as regards the conquest of the mountainous regions which divide our Indian territories from the advanced position taken up by Russia, it has been alleged that the subjugation of the intervening tribes is absolutely necessary for the protection of our Empire against a Russian attack. The Foreign Office, it has been hinted, possesses alarming information on Russian schemes for the invasion of India; and the Will of Peter the Great is referred to in justification of the alarm. The Will, it is true, says:—"Hasten
" the decline of Persia, penetrate to the Persian Gulf and
" make your way to the Indies—they are the Emporium
" of the world." But the Will required the previous subjugation of Continental Europe, and gave as a reason for considering the plan practicable, that "the European
" nations had mostly reached a state of old age bordering
" upon imbecility, or were rapidly approaching it, and that
" they would then be easily conquered by a people strong
" in youth and vigour. Approach Constantinople. He
" who shall reign there will be the sovereign of the world."

Now, the fact is that the European nations, far from having fallen into the anticipated state of senility and decay, are full of vigour and enterprise, while Russia, during

the last hundred and fifty years, has not been able to take the first step in her projected march of conquest, which was to lead to the Indies. It seems, therefore, unaccountable that the rulers of a great and powerful nation like England should be led, by the fear of a Russian advance through the most difficult country in the world, to embark on an arduous and problematic task, at a great risk of failure, and with the certainty of creating serious discontent, if not actual disaffection, among the two hundred millions of her Indian subjects who are being compelled, by oppressive taxation, to defray the cost of these doubtful and unsuccessful ventures. The astonishment becomes still greater, when it is remembered that our most eminent military authorities have all along declared that a Russian attack from Central Asia could most effectually be defeated upon the Indian frontier within reach of our reserves and material resources, and that it would be excessively unwise to advance and encounter the foe in the intermediate difficult and inhospitable region. Lord Roberts, at the termination of the last Afghan war, expressed himself thus on the subject :—"Should Russia in future years attempt to "conquer Afghanistan or invade India through it, we should "have a better chance of attaching the Afghans to our "interests, if we avoid all interference with them in the "meantime. The longer and more difficult the line of "communication is, the more numerous and greater the "obstacles which Russia would have to overcome; and so "far from shortening a mile of the road, I would let the "web of difficulties extend to the very mouth of the Khyber." This opinion, thus clearly defined, has since been neither retracted nor in any way qualified. Besides, the failure, during the last eighteen years, of all our attempts to subjugate even the border tribes of Afghanistan, ought long since to have convinced us that the task was impracticable, and that the money we spent, year after

year, in its prosecution, only aggravated the financial burden which our previous failures inflicted on the people of India.

An idea has prevailed with the Government that bribes would effect what our arms failed to accomplish, and money has accordingly been lavished on tribal Chiefs on condition of their acknowledging our supremacy. Such acknowledgments have been purchased from a number of Sirdars; but their tribesmen, disregarding the bargain, have all along resented our presence by attacking our convoys and detached parties, and burning our military posts, especially in the Zhob valley and in Waziristan, where we have for some years been planning the construction of a railway to Pishin, in order to secure our communications with Quetta, the line through Sind being frequently interrupted by floods and landslips. The recent Mission to Kabul and the large increase made in our subsidy to the Amir, were said to have induced him effectually to discourage the hostile behaviour of the Waziris, and to have thereby secured the safety of our military road through the Gomul pass. This expectation, however, has been frustrated, as will be seen from the following statement published in the *Pioneer* of the 25th February last:—"The Waziris are bent on mischief. In addition to attacking a patrol in the Bitani country, they have given trouble at the Western entrance of the Gomul pass. Captain Rattray, of the 22nd Punjab Infantry, was proceeding to Tank when the guard in charge of his baggage was attacked eight miles east of Kajuri Kach. A Lance Naib and three sepoy were killed, and their rifles carried off."

A similar state of things prevails in the lower part of the Kuram valley where we are also endeavouring to exercise authority and to establish a military post near Malana. Some Turi headmen have consented to receive British pay

and to induce a few hundred of their followers to enlist in a sort of militia corps. The Afghan tribes of the country, however, repudiate our pretensions, and have taken up arms in defence of their independence. Sarwar Khan, their leader, had in March last an interview with the Lieutenant-Governor of the Punjab, the particulars of which have not been made known; but the statement published in the *Englishman*, of the 28th March, that "Since our agreement with the Amir he will doubtless receive no encouragement from Kabul," would shew that the Chieftain and his followers remain hostile to our presence in the tribal territory.

These events are significant in their bearing on the finances of India; they show that the long series of trans-frontier expeditions, which caused so heavy a drain on the Indian Exchequer, must now be renewed, if the Waziris and other tribes, whom we have, for eighteen years, been endeavouring to subjugate, are to be brought under British control.

A review of the financial administration of India since 1860, shews :—

1st. That, within a few years, a severe crisis occurred, which was due, according to the evidence collected by the Indian Finance Committee, to great extravagance on the part of the Government, and to the neglect of all sound principles of State economy;

2nd. That in 1876, when the depreciation of the metal in which the Indian revenue is collected, became alarmingly threatening for the future, preparations were, nevertheless, commenced the same year for an unprovoked war, with the avowed object of acquiring a "Scientific British Frontier," in the heart of Afghanistan; and

3rd. That the heavy expenditure subsequently incurred in unprovoked military operations beyond the frontiers of India, has so deranged the finances of that country that

loans have now to be raised for paying the interest of the Public Debt.

II.—THE PROXIMATE CAUSES OF THE PRESENT SITUATION.

It is in the inordinate expenditure on military schemes, entered upon since 1876, that our present difficulties have originated; and until such expenditure is effectually arrested, and the finances of India are administered upon rational and acknowledged principles of economy, the task of replenishing the Indian Treasury must continue to be as hopeless a task as that of filling a bottomless cask with water.

The Government contend that the depreciation of silver is the only cause of their present difficulties; but this contention is inadmissible so long as the extravagance and neglect of principles, which brought on the crises of 1870, 1878, 1882, and 1888, are the leading features of their administration. Besides, Government have not been the only sufferers in the silver question; all who derive their incomes from Rupee Paper, from Indian salaries, or from industries or professions exercised in India, and have to use their incomes partly in Europe, are sufferers from the same cause; and if these persons have avoided bankruptcy, it is because they took timely precaution against the peril, by reducing their expenditure and submitting to retrenchment and economy, which doubtless pressed heavily, and even cruelly, upon individuals and families, but which common prudence and honesty inexorably enjoined.

The depreciation of silver, like the depreciation of other property caused by an excessive supply, creates a situation which is regulated by a natural law governing rulers and subjects alike; and the history of our own times has repeatedly shewn how vain it is for an extravagant Government to seek shelter from financial disaster in oppressive taxation and loans. Eighteen years ago, the Indian

Finance Minister warned the Government, in the following impressive terms, of the urgent necessity of preparing to meet the difficulties which have now assumed such alarming proportions :—"From whatever point of view the depreciation of silver is considered, it is the gravest danger that has threatened the finances of India. War and famine have often inflicted losses, but such calamities pass away. The losses are known and limited. This is not the case with the present cause of anxiety. Its immediate effects are serious enough ; but that which adds significance to it is that the end cannot be seen, and the future is involved in uncertainty." (*Budget Statement*, 1876.) Not only was this warning of the need for reform and economy contemptuously cast aside by the Government, but the stupendous project of conquering Afghanistan was launched the very same year, a project which, had it been realised, would have intensified and perpetuated our financial difficulties, but which eventually resulted in most humiliating national disasters and an addition of twenty-five millions sterling to the public debt of India.

Notwithstanding this deplorable result, the fatal policy of advancing into Afghanistan was revived on the 6th August, 1885, when the Indian Secretary of State declared in Parliament that heavy additional expenditure was considered necessary in consequence of the advance of Russian troops in Central Asia. The Army expenditure during the previous four years had averaged Rs. 163,500,000 ; it was increased by Rs. 30,497,000 the next year, and has since been growing steadily, the sum spent in 1892-3 (the latest year for which the accounts have been published) being Rs. 230,007,791, including Rs. 4,530,000 spent on "Special Defence Works."

During our continuous financial difficulties in India, no earnest proposal has been suggested either in Parliament or by any Minister of the Crown, for comprehensive reform

or the creation of some Constitutional control over the finances of that country. And yet, it is obviously through such measures alone that financial security can be obtained and due protection be afforded to the millions of Englishmen and Englishwomen, at home and abroad, who derive their means of subsistence from Indian trade and industry, from Indian Securities and from salaried employment in India. This supine indifference both to English interests when unconnected with party politics, and to the solvency of the Indian Exchequer, is traceable directly to the vicious system of government imposed on India. When that system was being discussed in Parliament in 1858, the late Mr. John Stuart Mill emphatically warned us that an incalculable injury would be inflicted on India, unless an influence were brought into existence, which would constitute for the finances of that country a protection similar to that which it had derived from the East India Company; and the evidence given before the Indian Finance Committee soon shewed how prophetic that warning had been. Lord Lawrence, in his evidence before the Committee, said: "The Secretary of State is supreme in all financial questions; he is a member of the Cabinet whose fortunes are scarcely affected by any consideration likely to promote the interests of India, but whose existence may at any moment be terminated by a hostile vote of the commercial interest." Subsequently a member of the Committee (Prof. Fawcett) observed in Parliament, 6th August, 1872:—"The Secretary of State for India is simply a member of the Cabinet, and what chance is there of the affairs of India receiving adequate consideration, when the Cabinet is perplexed by a host of questions which may affect the fate of an administration? India may be neglected, her money may be wasted, her affairs may be mismanaged, it will not affect the interests of the party, it will scarcely raise a ripple on the surface of politics."

The accuracy of these statements, which has never been questioned, is now strikingly confirmed, by the exemption just granted to Lancashire cotton goods, from the duty which is levied on all other goods on their entrance into India. This exemption, which necessitates additional taxation and loans to the extent of about Rs.15,000,000, is virtually a grant made from the revenues of India to the manufacturing classes in Lancashire, for the purpose of securing the votes of their representatives in Parliament—it might even not inaptly be charged as a misappropriation of public money. The Tariff Bill, involving the exemption, was passed by the standing official majority of the Indian Legislative Council on the 10th March last; and the following extracts from the speeches delivered by official members on that occasion, will shew how that Council, which was intended by Parliament to be a deliberative body charged with protecting the interests of India, has been converted by the Secretary of State, by his despatch of 24th November, 1870, into a mere office for giving the form of law to his autocratic determinations. Hon. Sir Charles Pritchard said:—"My own views regarding the exclusion of cotton goods from taxation under the Indian Tariff Bill, are closely allied to those of the hon. member who has moved the amendment. But I sit in this Council not as an independent member, but in virtue of the office I hold as a member of the Executive Council of the Governor-General. The Government of India is subject to the control of the Home Government. Her Majesty's Government has decided against the inclusion of cotton goods in the schedules of the Indian Tariff Bill. I must accept that decision and take my part in giving effect to it; I shall accordingly vote against the amendment." Lieut.-General Brackenbury said:—"I am personally of opinion that, in the present situation, it is desirable in the interests of India, that import duties should be imposed upon

"certain classes of cotton goods ; but I intend to vote against the amendment, as I cannot think that, as a member of the Executive Council, I should be justified in voting against the orders of her Majesty's Government."

The authority assumed by the Secretary of State to direct that the members of the Legislative Council in India should vote, not according to their conscience and convictions, but in obedience to his orders, is, I submit, both illegal and contrary to public morality. It may be remembered that in 1862, although oppressive taxation had been imposed in India in consequence of the expenditure and loss of revenue occasioned by the mutinies and rebellion of 1857-8, it was proposed to grant a large sum of money to Ghulam Mahomed, the son of Tipoo Sahib of Srirangapatam. The grant had been sanctioned by the Secretary of State under certain influences which were then prevailing at home. Sir Barnes Peacock, Chief Justice of Bengal, who was one of the additional members of the Legislative Council, having inquired on what grounds the grant was to be made, the Government members objected to the full particulars of the case being submitted for the consideration of the Council, and proposed that the matter should be referred to the Secretary of State for decision. Thereupon Sir Barnes Peacock observed that the Secretary of State had no *locus standi* in that Council, which was constituted by an Act of Parliament, and that its members had a right and were bound to look into the expenditure of money raised under their sanction.

The Secretary of State then suddenly became of opinion that it was inexpedient that a Judge of the High Court should sit in that Council ; and the motion for the grant in question was accordingly adjourned until the period of Sir Barnes Peacock's membership had expired. The other official members of the Legislative Council, who were salaried servants of the Government, were made to under-

stand the necessity of obeying its orders, irrespective of their legality and justice, and the standing majority of the Council is still composed of official members.

The speeches just cited from the records of the Council of the Viceroy, clearly lift the veil which ordinarily conceals from public view the internal machinery of the great and costly edifice by which India is governed. Outwardly, the edifice is most imposing—a Governor-General receiving the highest salary known in the British Empire, Governors, Lieutenant-Governors, and Chief Commissioners proportionately remunerated, Executive and Legislative Councils apparently in deep deliberation over the actions and laws best suited to promote the welfare of the country; but the drawing aside of the curtain exposes the meagreness and rough structure of the internal mechanism. The imposing personages viewed by the public are moved in their respective circles, not by the dictates of their reason and experience, but by electric wires worked from Downing Street by an individual to whose sole discretion the happiness of the Indian people and the expenditure of the revenue exacted from them, have been intrusted. This individual, who is selected, for no special qualification for the great trust reposed in him, but solely for the influence he exercises in party politics, is constrained, moreover, by irresistible surroundings, to satisfy in the first place the requirements of the Cabinet on which his official existence depends, and the claims of the British constituencies which support that Cabinet.

The present exemption of Lancashire cottons from import duty is only one instance of an evil which spreads in various directions. The valuable Indian patronage enjoyed by the British Cabinet enables it to reward its supporters in Parliament; and any reform which requires a diminution of that patronage is necessarily distasteful to the Government. Accordingly, for four-and-twenty years

the highest military authorities have declared that the maintenance of three armies and three Commanders-in-Chief, while it entails much useless expenditure, is positively injurious to the efficiency of our military force in India ; and a question was simultaneously raised—if the Punjab, the North-Western Provinces, and Oude can be administered by Lieutenant-Governors and Commissioners, why should a more costly system be kept up in Bombay and Madras ? Both the suggested reforms involved questions of patronage, and were persistently ignored by the Government for twenty years ; the former has now been taken up, but the latter remains shelved.

In view of the supineness of the Government in the matter of reform, the member of the Indian Finance Committee, from whose speech a passage has already been quoted, said on the same occasion :—" But how are we to ensure that the finances of India will be managed in the future with greater care and economy ? " The question was answered by himself in the following words :—" Every effort should be made to interest the English public in the affairs of India. I believe that the high price of Indian Securities is due to the fact that investors believe that England, if anything went wrong with the revenues of India, would be, if not legally, at least morally responsible for the money that had been lent on the security of the Indian revenue. Investors may have been deluded into that belief by an Act which this House unfortunately passed some years since, which allows trust money to be invested in Indian Securities. The investors are so numerous and so widely scattered, that if their interest in India were awakened by pecuniary considerations, this House would soon reflect the feeling, and the Government would then know that they could no longer remain passive spectators of acts of extravagance and mis-management, like those which have been described. An attempt has in vain been

“made to get the Financial Department to publish a clear account of the loans that were raised and how they were expended.”

It might also be useful to remind investors of the following significant remarks which fell from the late Earl of Derby, in the House of Lords, on 3rd March, 1881, when it was suggested that the British Exchequer might, in case of need, come to the assistance of India for bearing the expense of Lord Beaconsfield's "Scientific Frontier" policy :—"It will be time enough to discuss that hypothesis when it is shewn that English constituencies, chiefly composed of working men and poor men, are willing to increase their burden for any such purposes. I do not believe that they would agree to it."

III.—SOME PROMINENT FEATURES OF THE ACTUAL SITUATION.

While endeavouring to tide over their financial difficulties by taxation and loans, the Government have ventured on certain empirical remedies for counteracting the depreciation of silver, in its adverse effect on the sale of their Indian Treasury drafts. The Indian mints have been closed and a duty has been imposed on silver imported into India, in the expectation that these measures, which tend to reduce the supply and raise the value of silver in India, will produce a corresponding rise in the price of drafts payable in that country. It should be remembered, however, that the price of such drafts has hitherto been regulated, not by the value of silver in India, but by its price in London, and that the same condition must continue mainly to prevail, so long as the aim and the basis of the bargain in question remain unchanged. The aim of the Government in offering their drafts for sale, is to bring home that large portion of the Indian revenue which is annually spent in England.

In earlier times the conveyance was effected by the Rupees themselves, or their equivalent in bullion or merchandise, being shipped for sale in London; and later, when the Government were precluded from trading, bullion was still available for the desired remittance. Simultaneously with these requirements of the Government, merchants wanted funds sent to India for the purchase of Indian produce; and while a part of these wants was supplied by shipments of European goods to India, bullion was available for the remainder. Under these circumstances it suited both the Government and the merchants, that the Rupees, which the former desired to bring home, should be made over to the merchants on their paying the equivalent in Pounds Sterling to the Government in London. This transaction has, for years, been carried out by means of drafts on the Indian Treasuries, which the Government sold at such rates of exchange as gave them an amount in Pounds Sterling at least equal to the sum which the Rupees, if brought over and sold in London, were likely to produce. On the other hand, the merchants and all who desired to send funds to India, were willing to buy the Treasury drafts so long as they were obtainable at rates which would lay down fully as many Rupees in India as a shipment of silver purchased in London was likely to realise in that country—both parties taking into account the delay and expense attending bullion shipments. Thus it has been the price of silver in London, and not its value in India, that has ruled the rate of exchange in the sale and purchase of drafts payable in India.

The additional charge which the duty now imposes on silver shipments to India may induce remitters to pay a somewhat higher rate of exchange for drafts, but it must also, by restricting the export trade of that country, decrease the demands for drafts, and thereby affect the rate of exchange in the contrary direction.

Meanwhile, the experimental measures adopted cannot fail to cause incalculable mischief: 1stly, by obstructing an important outlet of the silver markets in Europe and America, and thereby tending to depress the price of silver in London; 2ndly, by curtailing the facilities for sending funds to India, and thereby hampering her Export trade on which her agriculture and the collection of the Land Revenue greatly depend; and 3rdly, by crippling, through a stoppage in the free supply of currency, her internal trade and industry which constitute important, though indirect, sources of her State revenue.

Other remedies also for the depreciation of silver have been discussed for the last twenty years. The introduction of a gold standard in the Indian currency, and the establishment of Bimetallism have been foremost among the measures advocated. The value or utility of the former must necessarily depend on the cost of carrying it into effect; and while no reliable estimate of such cost has been produced, an opinion has prevailed in well-informed quarters that the cost, under existing circumstances, would considerably exceed the advantage expected to accrue from the measure.

Then as regards Bimetallism, its advocates are numerous, and many of them influential statesmen; at the same time no practical means have been suggested, except an International Convention, for securing the primary condition of the scheme, namely, the maintenance of a fixed relative value between gold and silver. Lord Salisbury, who, as our Foreign Minister, took steps to ascertain whether such a Convention would receive, in its many details, the unanimous support needed for success, thought that the project was impracticable; and his successors in that office have not declared a contrary opinion. Under these circumstances, it is obvious that other and more immediately practicable means must be discovered if the imminent peril

of bankruptcy is to be averted. The Financial Statement of the Government, however, suggests no such means.

The Indian Budget for 1894-5 shows a deficit of Rupees 29,230,000, towards which it is proposed to raise Rupees 11,400,000 by new import duties, to appropriate Rupees 10,760,000 of the Famine Relief fund, and to retrench Rupees 4,050,000 from the contributions destined to the Provincial Governments, thus leaving Rupees 3,020,000 uncovered. This sum, added to the deficits of 1892-3 and 1893-4, amounting together to Rupees 26,260,000, constitutes an accumulated deficit of Rupees 29,280,000, which is to be provided for out of loans. During the debate on the 27th March in Calcutta, it was emphatically urged on behalf of the Government that the financial difficulties of the day were due entirely to the depreciation of silver, that is, to a cause beyond their control; and the measures proposed for dealing with those difficulties are described in the Financial Statement as "a programme of retrenchment and vigilance intended to tide over a period of transition." Now these opinions betray a deplorable misapprehension of the crisis; seeing that, if the present necessity of borrowing for ordinary expenditure is to be ascribed to the depreciation of silver, the crisis cannot fairly be described as "a period of transition," when the probabilities of the future (in view of the large quantity of silver stored in America, which may any day come on the market) point to an indefinitely prolonged period of depression in the value of that metal.

Then to say that the programme of the Government is one of retrenchment is likewise misleading. It is true that the contributions to the Provincial Governments are to be reduced by Rupees 4,050,000; but the full meaning of the operation will be understood, when it is remembered that, under the existing arrangement in India, the Provincial Governments receive from the Imperial Treasury certain allotments which are avowedly insufficient for their wants,

but which they are authorised and ordered to supplement by taxation imposed within their respective territories. The so-called retrenchment of Rupees 4,050,000 therefore is in reality the imposition of Provincial and local taxes, which are not to appear in the Imperial Budget.

There is also to be a retrenchment or reduction in the allotment for public works, from Rupees 5,000,000 to Rupees 3,500,000, the works to be suspended being the Cawnpore extension of the Lower Ganges Canal, and the Lucknow-Rae-Bareilly railway to Benares. Works of this nature, when interrupted in their construction, are liable in India to serious injury from floods which annually recur; and the following remarks of the late Professor Fawcett demonstrate the injury which results from such interruptions:—"It is impossible to ascertain from the figures in the Budget to what extent a surplus is due to the sudden cessation of expenditure in public works which have already been commenced, and which on the one hand cannot be abandoned without wasting the money already expended, and cannot on the other hand be suspended without adding greatly to their ultimate cost. No circumstance has more powerfully promoted waste and extravagance than the impulsiveness with which public works have been undertaken, and the suddenness with which their construction has been suspended." (*Indian Budget Debate*, 6th August, 1872.)

If we now turn to the subject of the Revenue, we find that a marked improvement is alleged to have taken place in the land revenue of 1893-4—a statement which, taken by itself, would indicate a prosperous state of agriculture and a healthy condition of that most important branch of State income. But a much less favourable conclusion is arrived at as soon as the modes by which the increased income was realised are inquired into. In Assam, where the assessments had just been greatly enhanced, a military force had to be

employed, and people were shot down before the collections could be proceeded with. In other provinces, the attachment and sale of estates and farms were resorted to with extreme severity. In Bengal, where the land tax is generally less oppressive than in other parts of India, 17,000 estates, or shares of estates, were attached for default of revenue, and the Government purchased at their revenue sales forty-three of the estates so attached for the absurdly small sum of 54 Rupees (see *Bengal Administration Report*, 1893). In the Ryotwari districts of Madras, the collection processes were marked by still greater oppression.

While these harsh and suicidal methods of realising excessive assessments may bring some temporary relief to an exhausted Treasury, they result in the destruction of much agricultural capital and in the impoverishment of the cultivators, and cannot therefore fail to inflict very serious injury on the most important source of the Indian revenue.

Moreover, the alleged improvement in the land revenue of 1893-94 may turn out to be an error, seeing that the figures in an Indian Budget have sometimes been placed under incorrect headings, and thereby led to misleading conclusions. For instance, the Indian Finance Committee discovered, after a good deal of cross-examination, that a sum of £427,000, which appeared under the head of land revenue, was actually the accumulated proceeds of waste lands sold in previous years, and which, under the law authorising the sale, should have been employed in the reduction of the public debt. "So anxious was the Government to " manufacture a surplus that the law and every considera- " tion that should influence prudent financiers or careful " Statesmen, were cast to the winds. Many as have been " the strange disclosures made by the Indian Finance " Committee, nothing perhaps throws a more instructive " light on the way in which our Indian affairs are managed,

"than the confession made by official after official of "such appropriation of capital to income."—(Professor Fawcett's Speech, *Indian Budget Debate*, 1873.)

The same mistrust of Indian Budgets has been reflected in the *Times*, a leading article in which paper (November 11th, 1872), said:—"Notwithstanding the determined and "ingenious defence made by the Department in London "whenever adverse criticism is heard in the House of "Commons, we cannot bring ourselves to feel confidence in "the Budgets of our successive Ministers at Calcutta. We "will go further and say that men not at all given to timidity "look upon the financial position of India with anxiety; and "although fully admitting the wealth of the country and its "capacity to yield large yearly sums to Government, they "believe that taxation is not only becoming inordinately "heavy, but that it is not imposed according to the wisest "methods. We are straining ourselves in a time of peace, "and no further resource has been suggested by our "Statesmen beyond a tax [the income tax] which even "when kept down to an insignificant amount, has proved a "cause of irritation and misgiving throughout the "country."

IV.—THE FINANCIAL PROSPECT IN INDIA.

In a forecast of the proximate future, mere possibilities, such as an extraordinary increase or decrease in the world's supply of either gold or silver, must, for obvious reasons, be left out of account, and probabilities alone be considered. Famine, and wars undertaken for Territorial aggrandisement or the extension of political influence, have, during the last thirty-four years, greatly added to the annual expenditure and the permanent debt of the Indian Government, and the recurrence of similar calamities under present conditions, would most probably prove fatal to the financial integrity of the State. On the other hand, a cycle

of favourable seasons and a wise and economic administration of the finances, with the maintenance of peace, might in a few years restore equilibrium between the income and the expenditure of the Indian Government. It is important, therefore, to inquire whether a change of policy so urgently needed, may be brought about in the present critical state of things—a change from the reckless extravagance of the last thirty-four years, to a policy of prudence and economy.

Experience, in a misguided career, has sometimes, through the punishment which recoils on the guilty, induced amelioration and reform; but no such wholesome effect can be looked for in the present case, seeing that those who have mismanaged the affairs of India, have nowise, in their own persons, suffered from their misdeeds. Accordingly, no reform followed previous crises, and it would be idle to look for a contrary result from the present crisis, when the pernicious influences under which India is governed remain as powerful as they were thirty-four years ago. And yet the situation is more perilous now than it was on any of the occasions referred to. Our reserves are exhausted, and the appalling barrenness of our present resources is forcibly brought to light in the following remarks made by the Finance member of the Legislative Council on the 1st March last, when he introduced the Indian Tariff Bill:—"Six years ago in this Council, I showed that within about four years we had been called "to enhance our expenditure by nearly 12,000,000 Rupees "in consequence of the increase of the Army and of military "measures adopted on the North-West frontier, nearly "18,000,000 Rupees in consequence of the annexation of "Upper Burmah, and nearly 18,000,000 Rupees in consequence of the increase of exchange charges. These "increases of expenditure we had met by the imposition of "Income Tax, by the absorption of the Famine grant, and

“by the curtailment of the sums assigned to provincial purposes. We found ourselves then at the end of our existing resources. We came before the Council, therefore, to justify an increase in the Salt duty, and to ask for further power of taxation, namely, in respect of petroleum. I then laid before the Council a short review of current finance, in which I addressed myself in part to the question of the extent to which we had permitted increased expenditure in matters within our control. To-day I come before the Council with a much more serious proposal, but based upon the same grounds.”

The destitution of the Indian Exchequer is made still more apparent in the Financial Statement of the Government, where it is stated, at paragraph 50 :—“The means we have adopted in the Budget Estimates of nearly balancing the Revenue and Expenditure are means which will hardly be available a second time. It is at some risk that we suspend even for one year the provision which we shall certainly require if a famine season comes upon us. The 40 lakhs also which we obtain from the Provincial Governments exhausts for the time that source of relief from temporary difficulties.”

The saddest feature in the case is that the Government, while fully conscious of the gravity of the situation, takes no step towards ensuring safety in the future ; but looks to the rehabilitation of the Indian currency alone for relief, and leaves to their successors the task of providing for the difficulties which they themselves are aggravating by the neglect of economic reforms, and by additions to the public debt. They say :—“We have just entered upon the currency crisis, upon the settlement of which depends our future. Whether we shall be able to establish our Rupee at what we may call a favourable figure, is a question the solution of which must practically be left to experiment. Time has not yet declared whether our

"financial position is going to improve or going to deteriorate. It is a serious confession to make, but it is nevertheless true, that we can do little more than watch in what direction the forces are working which will in the end bring us either security or more serious troubles than any we have yet had to provide against." (Supplement to the *Gazette of India*, 24th March, 1894, p. 364.)

This lamentable supineness and the incessant efforts of the Indian Government to curtail the Jurisdiction of the High Courts because it interferes with the illegal processes by which the State income is acquired, remind us of what Louis XV. said to a confidant regarding difficulties which he decided on leaving his successor to contend with. "Those long robes," said Louis, alluding to the members of the Judiciary, "would like to tutor me. The Regent was much to blame for giving them the right to make remonstrances ; they will end by ruining the State ; they are an assembly of Republicans. Things, however, will last as long as I do." Similarly, the Indian Secretary of State appears, from the above extracts, to have decided on leaving his successor in office to deal with the mischief which he is himself instrumental in perpetuating.

An article in the *Law Magazine and Review* for August, 1893, has shewn how similar is the present state of things in India, to that which prevailed in France, as described by Baron Ferdinand de Rothschild in his paper in the *Nineteenth Century*, entitled "The financial causes of the French Revolution." A perusal of the article in this *Review* will greatly assist the reader in apprehending the actual position of affairs in India. One of the most wide-spread and sanguinary revolutions recorded in the annals of the world sprang from the despotism and extravagance of the rulers of France ; and although its advent was clearly foreseen by bystanders, it took the Government entirely by surprise. Looking at the

remarkable similarity in the premises, it would be irrational to believe that the same causes will not produce the same effects, and that no amount of oppression and injustice will rouse the Indian populations to rebellion.

J. DACOSTA.

III.—THE LATE HON. DAVID DUDLEY FIELD AND THE LATE M. AUGUSTE COUVREUR.

THE Association for the Reform and Codification of the Law of Nations has lately sustained almost simultaneously two severe losses from the singularly thinned ranks of the members of the Foundation Conference at Brussels in October, 1873.

David Dudley Field, one of the Founders, and a past President of the Association, died very suddenly from the effects of pneumonia, within a couple of days of his return from a visit to Europe, at his residence in New York, early in the morning of Thursday, 12th April, at the ripe age of eighty-nine, as we learn from the *Chicago Legal News* for 14th April, 1894.

Auguste Couvreur, one of the Founders of the Association, died, at the relatively early age of sixty-six, in the morning of Monday, 23rd April, but eleven days after Mr. Field, at his recently built residence, 254, Chaussée de Vleurgat, Brussels, after only a couple of days of acute suffering from a cancerous affection which had been discovered some months before, but which had not been expected to take a critical turn so soon. Remembering both these men, as we do, taking part in that most interesting Foundation Conference in the Town Hall of Brussels, under the presidency of Auguste Visschers, and with such world-famed fellow-workers as Mancini,

Passy, De Laveleye, Bluntschli, Bernard, Twiss, and others, of whom, as far as we can remember, Sir Travers Twiss and the present writer are almost, if not quite, the sole survivors among the British members, we cannot but feel a personal sense of loss, additional to that which will be felt by the Republic of Letters, in the removal from among us of so able a Jurist and so earnest a Law Reformer as David Dudley Field, and so distinguished an Economist and so zealous a Philanthropist as Auguste Couvreur.

David Dudley Field was, as the *Chicago Legal News* tells us, the eldest of four sons, all men of mark in their after life, of a New England pastor, at Haddam, Conn., where he was born, 13th February, 1805. Of his other sons, one, Cyrus, as our Chicago contemporary says, made himself a name that was familiar in all civilised countries as the projector and builder of the first cable connecting Europe with America. Of the others, one, Stephen J. Field, is an Associate Justice of the Supreme Court of the United States, distinguished, so we read in the *Herald of Peace*, 1st May, 1894, citing *Harper's Weekly*, by his aristocratic look, and old-fashioned courtliness of manner, while another, Rev. Dr. Henry Martyn Field, is a leading Editor in the Religious literary world of America. David was an *alumnus* of Williams College, where he graduated in 1825, his Legal education being carried out at Albany and New York. He was called to the Bar in 1828, and so soon did he enter upon his life work as a Law Reformer that it was "early in the '30's," as the *Chicago Legal News* records, that he "began an agitation for the simplification of the rules of practice." This "agitation" as a Law Reformer he never gave up, his very last literary contribution to the subject being a Paper for the Law Reform Congress during the Chicago World's Fair, which one of those who heard it read told us he considered one of the ablest that had ever been penned by its distinguished author.

We had the pleasure of numbering David Dudley Field among the valued American contributors to this *Review*, and his latest Article printed by us happened to be on a subject eminently characteristic of the writer, viz., the *Amelioration of the Laws of War*, which will be found in our No. CCLXVII., for February, 1888.

In bygone days, David Dudley Field's presence was familiar to us in England at the Congresses of the Social Science Association, no less than at the Conferences, whether in England or on the Continent, of that Association for the Reform and Codification of the Law of Nations which he had so largely helped to found. Our own invitation to the Foundation Conference of the Association, included both the American Invitation of 30th June, and the European, dated Brussels, 19th September, 1873, which last, bearing the heading "Conférence Internationale pour la réforme et la codification du Droit des Gens," was signed by one Belgian, the late Auguste Visschers, who had been President of the Peace Congress, Brussels, 1849, and whom the Conference elected as its President, and by two Americans, the late Hon. David Dudley Field, President of the American International Code Committee, and the late Rev. James B. Miles, Secretary, as Delegates of the Provisional Committee for convening the Conference. At an initial meeting held in New York, 15th May, 1873, a Committee of five had been appointed to act for the United States in the matter of calling a meeting for consultation upon the best method of preparing an International Code, the said Committee being composed of David Dudley Field, LL.D., Theodore Dwight Woolsey, D.D., LL.D., Emory Washburn, LL.D., William Beach Lawrence, LL.D., and the Rev. James B. Miles, D.D., Secretary, who as such Committee, signed, on 30th June, 1873, an Invitation to Publicists to meet in Brussels, 10th October following.

Of the New York meeting, 15th May, 1873, the two leading results were 1stly, the formation of the American International Code Committee, with Elihu Burritt, Charles Sumner, Whittier, President Porter, J. V. L. Pruyn, ex-President Hopkins, of Field's own *Alma Mater*, as members, besides Dudley Field himself, and a goodly array of other distinguished American names *quos perscribere longum*; and 2ndly, the foundation of the Association for the Reform and Codification of the Law of Nations.

Yet another result, we may fairly say, and scarcely less a leading result, was the republication, in 1876, of the famous *Outlines of a Code of International Law*, a work with which the name of David Dudley Field must always be associated no less than with his celebrated *Civil Code* for the State of New York, which has been adopted, so we learn, in as many as twenty-four States and Territories of the Union.

The object at which David Dudley Field aimed in International Law is still a goal which has to be reached. The memory of his life-long labours may well encourage us to continue the good fight which he fought, until the goal be reached.

Auguste Couvreur, whose loss we have to regret at an age when we might have hoped for some years yet of intellectual activity on his part, was born in Ghent in 1828. The son of a Journalist, he himself early adopted Journalism as his profession, and became distinguished in it, as his old colleagues of the *Indépendance Belge* rightly said of him, because he loved it. "Couvreur aimait son métier de journaliste, et c'est pour cela qu'il y excellait (*Indépendance Belge*, Brussels, 24th April, 1894)."

For twenty-five years Couvreur had been a contributor to that Belgian daily paper with which his name must always be associated. For some years he had also been Brussels Correspondent of the *Times*, which recorded its sense of the loss sustained by his sudden and unexpected death in its obituary notices, on the 24th April, the very same day

that his own countrymen pronounced his panegyric in the words above cited. But Couvreur was much more than a Belgian journalist and a *Times* Correspondent. He was an Economist, an ardent promoter of the study of Social Science, and an unflinching Liberal politician, as well as a veteran in Philanthropy.

In his political character he was for twenty years, from 1864 to 1884, a prominent member of the Belgian Chamber of Representatives, having been sent to the Chamber as a Representative for Brussels in 1864, by the votes of the "jeunes libéraux," who, as the *Indépendance Belge* says, were the Progressives of that day. To the Liberal cause, in the broad sense in which he understood it, Auguste Couvreur remained staunch to the last, one of his very latest writings being an address urging united action of all sections of the Party in defence of their common principles, which attracted considerable attention at the time, and will probably now have still greater effect as being his last political utterance. He was resolutely attached to Commercial freedom, and defended it warmly both by speech and pen. He was the promoter and long the mainspring of the International Association for the progress of the Social Sciences, whose meetings at Brussels, Ghent, Amsterdam, and Berne, attracted considerable attention, and was one of the founders of the Association for Customs Reform. In this last connection he had fitly been named one of the Vice-Presidents of the International Congress on Customs Legislation and the Organisation of Labour, which is to meet at Antwerp in July. For several years he was Editor of the *Economiste Belge*, founded by Gustave de Molinari, while in his political character he was so distinguished as to have been one of the Vice-Presidents of the Chamber of Representatives. Auguste Couvreur has left behind him, in the words of his old fellow-workers, the reputation of "honnête homme, . . . homme de

travail et de conscience, . . . libéral sincère et loyal, . . . patriote dévoué au bien public."

We may add, from our own recollection of him in 1873, that Auguste Couvreur was also an earnest advocate of International Arbitration and of Peace. He had been associated with Cobden and the late Henry Richard, M.P., alike in the cause of Free Trade and in that of Peace, and he was fitly named a member of the Committee on International Arbitration appointed at the recent London Conference of the Association for the Reform and Codification of the Law of Nations, as was, equally fitly, David Dudley Field. Auguste Couvreur and Dudley Field were both in their several ways *pacis cultores*. To both of them, therefore, we hope, may fairly be applied that most musical of the Beatitudes, *Beati Pacifici*.

C. H. E. CARMICHAEL.

IV.—FOREIGN MARITIME LAWS: V. PORTUGAL.

TIT. II.

Insurance against perils of the Sea.

595. The rules laid down in Chap. I. and Chap. II., Sect. 1 of Tit. XV., Book II., so far as they are compatible with the peculiar nature of Marine Insurance and are not affected by the regulations of this Title, apply to the contract of insurance against sea perils.

[Book II., Tit. XV., *Insurance*; Chap. I., *General Provisions*.

Art. 425. All Insurances except Mutual ones are commercial as regards the insurer, whatever the object is and as regards the assured when the objects insured are merchandize or goods intended to be used in trade, or any business premises.

§1. Mutual Insurances are regulated by the provisions of this Code so far as any commercial matters outside the Mutual agreement are concerned.

§2. Marine Insurance is specially regulated by the provisions applicable to it in Book III. of this Code.

426. A Contract of Insurance must be in a written document which constitutes a Policy of Insurance.

§1. An Insurance Policy must be dated and signed by the insurer (underwriter) and must state :

1. The name or names of the firm, and the residence or domicile of the insurer.
2. The name or names of the firm, and the status, residence or domicile of the assured.
3. The subject matter insured and its nature and value.
4. The perils insured against.
5. The time at which the perils (insured against) commence and terminate.
6. The amount insured.
7. The Insurance Premium.
8. And all such circumstances as may concern the insurer as well as all conditions agreed on by the parties.

F. 332.

427. An Insurance Contract is governed by the conditions contained in the policy which are not illegal, and in the absence or insufficiency of such by the provisions of this Code.

428. An insurance may be made either for ourselves or on account of another person.

§1. If an insurance is made for a person or in the name of a person who has no interest in the subject matter of the insurance, the insurance is void.

§2. If the policy is not declared to be on account of another person it is deemed to be made on behalf of the person making it.

§3. If the interest of the assured is limited to a share in a thing which is insured in full, or to some right over it, the insurance is deemed to be made on account of all concerned, preserving to each the right to receive the insurance in proportion to his premium.

429. Any inaccurate declaration as well as any concealment of facts or circumstances known to the assured or to the person

making the insurance, and which might have an effect on the existence or conditions of the contract, render the insurance void.

§1. If the person making the declarations has acted *malà fide* the insurer is entitled to retain the premium.

430. An insurer may re-insure with another person the thing he has himself insured, and the assured may insure his premium of insurance with another person.

431. If the property in the article insured is transferred during the period of the insurance, the insurance passes to the new owner by the act of transfer of the property insured, provided that any matter outstanding between the insurer and the original assured in connection with it is adjusted.

Chap. II. *Insurance Against Dangers.* Sect. I. *General Provisions.*

432. An insurance against peril may be effected :

1. On a whole concern composed of many articles.
2. On the whole of each individual article.
3. On a share of each article either jointly or severally.
4. On anticipated profits.
5. On growing crops.

433. If an insurance against perils is for a less sum than the value of the thing insured, the assured will, in the absence of an agreement to the contrary, be responsible for a proportional part of losses and damages.

§1. If an insurance is for less than the value of the thing insured, the difference in value may be insured, and the insurer of the difference will be answerable for the excess, note being taken of the respective dates of the contracts.

§2. If all the insurances are of the same date each will be effective to secure the total value in proportion to the sum insured by each.

434. The assured may not, under penalty of rendering it void, effect a second insurance for the same time and against the same peril upon the same article for its full value except in the following cases :—

1. When the second insurance is conditional on nullity of

the first, or on the partial or total insolvency of the first insurer.

2. When the rights under the first insurance are made over to the second or renounced.

435. If the amount insured exceeds the value of the thing insured, the insurance is only valid up to this value.

436. An insurance is void if at the time the contract is made the insurer is aware that the risk has terminated, or if the assured or the person effecting the insurance is aware that a disaster has occurred.

- §1. In the former case the insurer has no right to the premium, in the second he is under no obligation to indemnify the assured but has a right to retain the premium.

437. An insurance is of no effect :

1. If the thing insured is not exposed to the peril.
2. If a disaster results from an inherent defect known to the assured and not disclosed to the insurer.
3. If the disaster is occasioned by the assured himself or by a person for whom he is civilly responsible.
4. If the disaster is caused by war or insurrection of which the insurer has not undertaken the risk.

- §1. In the first case the insurer has a right to half of the agreed premium not exceeding half per cent. of the amount insured.

- §2. The assured, within eight days of receiving information of the existence of an inherent defect in the thing insured which would, unless declared, invalidate the insurance, must give notice of it to the insurer, and he may declare the policy to be of no effect on restoring half the unearned premium.

438. If the assured becomes insolvent before the risk is terminated and owes the premium, the insurer may require security, and if it is not forthcoming may annul the contract.

- §1. The assured has a similar right if the insurer becomes insolvent or goes into liquidation.

439. All loss and damage that the thing insured sustains due to accident or circumstances beyond control of which he has undertaken the risk are at the charge of the insurer.

§1. The indemnity payable by the insurer is settled by the value of the thing insured at the time of the accident, having regard to the provisions of Art. 448* and the following paragraphs.

1. If the value is assessed by arbitrators nominated by the parties, the insurer cannot dispute it.
2. If this has not been done, the value may be proved by any legal evidence.

§2. The assured has no right to abandon to the insurer things saved from the disaster, and the value of such things is not included in the indemnity payable by the insurer.

440. The assured must, under penalty of being himself liable for loss and damage, give notice to the insurer of any disaster within eight days following that on which it occurred or on which he obtained information of it.

441. An insurer who pays for injury to or loss of the things insured, is subrogated to all the rights of the assured against a third party who has caused the disaster, the assured being answerable for every act by which he has prejudiced such rights.

§1. If the indemnity only covers a portion of the damage or loss, the insurer and the assured can agree to avail themselves of such rights each in proportion to the amount due to him.]

596. A policy of Marine Insurance must state, in addition to the matters prescribed in Art. 426 :

- (1.) The name, description, class, nationality and tonnage of the ship ;
- (2.) The name of the Commander ;
- (3.) The place to which the cargo is or ought to be carried ;
- (4.) The port for which the ship has sailed, will sail, or is intended to sail ;

* This Article relates to growing crops.

- (5.) The ports at which the ship is intended to load or discharge or call.

§ 1. If the statements required by this Code cannot be made, either because the person making the insurance is ignorant of them or on account of any peculiarity in the insurance, other declarations must be substituted for them sufficient to define the object insured.

F. 332, I. 605, H. 592, R. 550, S. 738. E. 174.

597. An insurance against sea perils may be effected on all things and values that can be assessed in money that are exposed to the peril.

B. 168, F. 334 (1885), G. 782, 783, I. 606, H. 593, 594, R. 538, 545, S. 743, Sc. 230. E. 176.

598. An insurance against perils of the sea may be made in time of peace or of war, before or during a voyage, for a whole voyage or for a fixed period, for a voyage both out and home, or for either singly.

F. 335, I. 609, H. 594, S. 744. E. 177.

599. When the captain or owner insures cargo, it can only be insured for nine-tenths of its actual value.

S. 750. E. 187.

600. Insurances are void which are made upon :—

- (1.) Wages and earnings of the crew ;
- (2.) Goods which are bottomried for their full value and without the insured perils being excepted ;
- (3.) Things the trade in which is contraband by the law of the kingdom, and ships, whether national or foreign, engaged in carrying them.

B. 168, 176, 184, 191, F. 334 (1885), 347 (1885), G. 784, 790, I. 607, H. 599, R. 547, S. 781. E. 190.

601. Goods that are carried may be insured for their full value, reckoning their invoice price, together with the expenses of loading and freight, or reckoning their price current at their destination on arrival without damage.

§ 1. A valuation made in the policy which does not state on which basis it is made may be

referred to either of those herein defined, and Art. 435 does not apply to it unless the value is in excess of the highest price.

B. 187, F. 332, 339, G. 790, I. 612, H. 612, 613, 615, R. 551, S. 752, 754, Sc. 233. E. 182.

602. If the policy is silent as to the period of the risk taken by the insurer, it will commence and terminate as follows:—

- (1.) As to the ship and its appurtenances, from the time she weighs anchor to leave port until she is anchored and secured in her port of destination.
- (2.) As to cargo, from the time the goods are taken on board the ship or into lighters intended to take them to the ship until they are landed at their destination.

§ 1. If the insurance is made after the voyage has begun, the period of risk runs from the date of the policy.

§ 2. If the discharge is delayed by the default of the consignee, the insurer's risk terminates thirty days after the arrival of the vessel at her destination.

B. 172, F. 328, 341, G. 827, 828, H. 624-634, I. 448, 601, 611, R. 557-559, S. 738 (11). E. 168, 184.

603. The liability of the insurer is limited to the sum insured.

§ 1. If the subject matter of the insurance sustains successive accidents during the period of the insurance the assured must bring into account, even in case of abandonment, sums paid to him or which are due for previous accidents.

G. 845, I. 624, R. 568, Sc. 253.

604. Unless otherwise agreed, all losses and damages that happen to the things insured during the period of the insurance by tempest, shipwreck, stranding, collision, compulsory change of course, voyage or ship, jettison, fire,

unlawful attack, explosion, leakage, theft, or quarantine imposed, and in general by all other perils of the sea, are at the risk of the insurer, except such matters as those in which, by the inherent quality of the thing, by law or an express clause in the policy the insurer is free.

§ 1. An insurer is not liable for the barratry of the Commander unless specially agreed, and such agreement will, moreover, be of no effect if a Commander mentioned by name is subsequently changed without the knowledge or consent of the insurer.

§ 2. An insurer, who expressly agrees to undertake war risks without precise specification of them, is answerable for loss and damage caused to the things insured by operations of war, reprisal, embargo by order of State, capture and attack of all descriptions, by the act either of a friendly or inimical government, whether existing *de jure* or *de facto*, recognised or unrecognised, and in general for all incidents and accidents of a state of war.

§ 3. An increase of premium stipulated for in time of peace for the contingency of a war or other event, but the amount of which is not stated in the contract, will be settled by taking into consideration those perils, circumstances, and stipulations that are mentioned in the policy.

B. 173, 178, 184, F. 350, 352, 353, G. 824, 825, 852, 853, I. 610, 615, 616, 618, H. 637, 640, 641, R. 539, 550 (n.), 555, S. 755, 756, 767, Sc. 248, 249. E. 186, 192, 195.

605. Where there is a doubt as to the cause of the loss of the things insured it is presumed to have been by perils of the sea, and the insurer is liable.

B. 186, G. 865, 866, I. 633, H. 667, S. 798, Sc. 258. E. 215.

606. A condemnation by a foreign Prize Court carries a

simple presumption of its validity in questions relating to insurances.

H. 658.

607. An insurer is not answerable for the expenses of the voyage, pilotage, towage, health visit, and other charges made on the ship on entering or leaving port, and tonnage, light, anchorage, health officer, and other similar charges on ships and cargo, unless they are of such a character as to be included in General Average.

F. 354, I. 619, R. 572. E. 196.

608. Every voluntary deviation in the course, alteration in the voyage, or change of the ship by the assured, frees an insurer of ship or freight from liability.

§ 1. The provisions of this Article apply to an insurance on cargo where the assured has agreed (to the deviation).

§ 2. An insurer in the case provided for in this article and in § 1 has a right to the whole premium if the period of the risk has commenced.

B. 182, F. 351, G. 817, 818, I. 617, H. 638, 639, R. 572 (8), S. 756 (1), Sc. 255. E. 193.

609. If the insurance is on merchandise for a voyage out and home, and if the ship after reaching her first port of destination does not load a return cargo, or only loads a part cargo, the insurer will only get two-thirds of the premium unless otherwise agreed.

B. 186, F. 356, I. 620, R. 579, S. 757. E. 198.

610. When an insurance is properly made on goods to be carried in different ships, with special notice of the amount secured on each, if the goods are, in fact, shipped in a less number of vessels than is specified in the policy, the insurer is only answerable for the amount that he has insured in the vessel or vessels which receive the cargo.

§ 1. An insurer may in the case provided for in the article receive half the agreed premium

in respect of the goods whose insurance has been without effect, provided always such indemnity does not exceed $\frac{1}{2}$ per cent. of their value.

B. 194, F. 361, G. 820, 821, I. 621, H. 652, S. 759. E. 203.

611. If the Commander is at liberty to touch at a port to complete or load a cargo, the insurer does not take the risk of the articles insured until they are stowed on board, unless otherwise agreed.

F. 362, I. 622. E. 204.

612. If the assured orders the ship to a more distant place than is mentioned in the policy, the insured does not undertake the risks of the additional voyage.

§ 1. If on the other hand the voyage is shortened, by being brought to an end at a port of call, the insurance remains of full force.

B. 195, F. 364, G. 817, I. 623, H. 653, R. 579, S. 763. E. 206.

613. The clause "free of average" frees the insurer from all and every damage, except in cases which give rise to an abandonment.

B. 198, I. 625, H. 646, R. 573.

614. If the insurance is on liquids or on goods which are liable to deteriorate or waste, an insurer does not answer for losses unless they are caused by striking, shipwreck, or stranding of the ship, and also by discharging and reloading in a port of distress.

§ 1. When an insurer is obliged to pay for damages referred to in this Article, he may deduct the ordinary waste.

B. 185, F. 352, 355, G. 825 (3), I. 615, H. 643, R. 572 (8), 575, S. 756 (6). E. 197.

615. The assured must give notice to the insurer within five days of the receipt of documents which shew that the goods insured were exposed to the perils and were lost.

B. 206, F. 374, G. 822, I. 627, H. 654, R. 560, 561, S. 765, Sc. 245. E. 214.

F. W. RAIKES.

V.—CURRENT NOTES ON INTERNATIONAL LAW.

Extradition.

The functions of a magistrate committing a prisoner for extradition were discussed in *The Queen v. Lushington*, L.R. [1894] 1 Q.B. 420. The question was whether he had power, under sect. 9 of the Extradition Act, 1870, to order the police to take charge of articles alleged to have been stolen by the prisoner and brought into Court by a purchaser under a *subpœna duces tecum*, in order that they might be produced upon the prisoner's trial in France. The Court (Wright and Kennedy, J.J.) expressed a view favourable to the contention that the magistrate had such a power, but actually decided the case upon other grounds.

Apropos of this subject, it should be noted that new Extradition Treaties have very recently been entered into by this country with the Argentine Republic (see *London Gazette*, 1894, p. 579), Portugal (*ibid.*, p. 1,438), and Liberia (*ibid.*, p. 1,518).

* * *

Foreign Sovereigns and Ambassadors.

The interesting cases of *Musurus Bey v. Gadban* and *Mighell v. Sultan of Johore*, which have already been commented upon in these *Notes*, have now been fully reported in L.R. [1894] 1 Q.B., p. 533 and p. 149 respectively. The Court of Appeal have very recently affirmed the decision of the Divisional Court.

* * *

Foreign Judgments.

In *Crozat v. Brogden and Others*, 9 Rep. 226, the Court of Appeal decided that security for costs against a plaintiff who is a foreign resident out of the jurisdiction, may be

obtained as well where the action is upon a Foreign Judgment as in any other case. Lord Esher, M.R., incidentally remarked that the plea raised by the defendant that the Judgment was obtained by the false statements of the plaintiff himself, was a good plea to such an action.

* * *

Foreign Immoveables.

In the case of *In the Goods of Tamplin*, L.R. [1894] P., p. 39, it was sought to include a will made in English form by a Testator domiciled in England disposing solely of Russian immoveables, in the probate of another English will of personalty and English realty. The former will was not in the form of the *lex loci situs*. Gorell Barnes, J., refused the application, and made some instructive comments upon the general law as to foreign immoveables as laid down by Lord Selborne in the familiar case of *Freke v. Lord Carbery*, L.R. 16 Eq. 461.

* * *

Contracts.

What will probably become a "Leading Case" upon the subject of the Private International Law of Contracts was decided very recently by the House of Lords in the matter of *Hamlyn & Co. v. The Talisker Distillery and Others* (see *Times* for 11th May, 1894, and *W.N.* for that week). The question, in brief, was as to whether Scotch or English Law governed a certain arbitration clause in an agreement. The clause was admittedly bad by Scotch Law but good by English. The agreement was executed in England, but one of the parties was a Scotch firm, and the place of performance was Scotland. The House of Lords, however, held that English Law applied, basing their decision upon the intention of the parties as deducible from all the circumstances attending the contract. The Judgments contain a most valuable and authoritative affirmation of the general principles

applicable to such cases laid down by the Court of Appeal in the *Missouri* case (42 Ch. D. 321). It should be further noted that another excellent illustration of the principles of Private International Law applicable to contracts is afforded by the very recent case of *The Industrie*, 1894 (6 Reports), 31.

JOHN M. GOVER.

Quarterly Notes.

The Public Franchise in Highways in U.S.A.

Report of the Master in Equity in Potts v. Quaker City Elevated Railroad Co.

We have been favoured by Mr. Dallas Sanders, Examiner and Master in Equity of the Court of Common Pleas, No. 3, for the City and County of Philadelphia, with a copy of his recent able *Report* to the Judges on what is even now the *cause célèbre* of *Potts, Wallace et al., Lippincott, Sternberger, and Sullivan et al. v. Quaker City Elevated Railroad Company*, as referred to him by Court on 24th December, 1892. The case is, we learn, from the Master's letter covering the despatch of the *Report*, to be appealed to the Supreme Court of the State of Pennsylvania, as the identical question has never been decided in that State. Whatever may be the decision of the Supreme Court, we cannot doubt that it will endorse the opinion of the Court of Common Pleas, No. 3, in its ruling on the exceptions filed by the Quaker City Company against the Master's Report, when the Court, in discussing the exceptions, said that the able report of the Master relieved them of the necessity of reiterating or adding to their views as already expressed, when the Court first granted an injunction against the Company (*Public*

Ledger, Phila., 24th January, 1894). The learned Master, in order to decide the first question, whether the defendant Company was one that could be incorporated under the General Railroad Act of the State, 1868, reviews the entire Railroad Legislation of Pennsylvania, from the grant of the first Passenger Railway Charter in 1857 down to the Act of May 14th, 1887, "to provide for the incorporation and government of street railway companies" in that Commonwealth. In the course of this survey he shews, conclusively to our own mind as to his, that the only powers for elevating or depressing Street Railroads in Pennsylvania were granted with a view to the special case of what are there called "grade crossings," and which we call level crossings. The dangers constituted by such crossings are well-known in this country, and we cannot therefore be astonished at special provision having been made by the State of Pennsylvania to meet such cases. But it is impossible logically to argue from the particular permission to elevate or depress in such cases a general permission to construct elevated Railroads, and we are therefore quite in accord with the finding of the Master against such general permission being read into the special and limited permission intended to provide for the safety of the public at level crossings.

The Master appears to us clearly to shew the distinction taken throughout by the State of Pennsylvania between ordinary Railways, which carry goods as well as passengers, and Street Railways which carry only passengers, and are so restricted by their covenant with the City of Philadelphia in the case before him, as also in all the Judgments and definitions of Text-writers cited for the purpose of shewing what the Courts and Text-books have held to be the distinguishing marks of a Street Railway.

A very subtle point was attempted to be taken by the Quaker City Elevated Railroad Company in their answer to

the Bill of the plaintiffs, and that, it would certainly appear to any plain mind, in the teeth of their own name as a company. For they denied, *inter al.*, that they were about to "erect or operate an elevated street passenger railway," but averred that they intended to "construct and operate a steam railway elevated over the surface of the street," thus relying, it would seem, upon the question of the motive power and not that of position. But the Judgments cited by the learned Master in his *Report* amply suffice to demonstrate to our satisfaction, as to his own, that the difference between railroads for general traffic and street passenger railways consists in their use and not in their motive power, as *per* Caldwell, J., in *Williams v. City Electric Street Railway Co.*, 41 Fed. Rep., 556 (1890). To the same effect, *Booth on Railways*, 8th Ed., 1892, and other authorities cited in the *Report*. On the second question before the Master, as to whether, granting the incorporation of the Quaker City Co. under the General Railroad Act of 1868, the Corporation would be entitled to locate its railroad upon the streets of Philadelphia, we understand that the latest edition of *Wood on Railways*, not published at the time the Master made his *Report* (dated 15th January, 1894), sustains the law of his conclusion against the Company. There are some singularly interesting historical features in the case in regard to the character of Market Street, the site of the proposed Elevated Railroad, and its antiquity as a public highway, and some very strong deliverances of the Courts are cited by the Master on the franchise of the Highway as an easement of the Public. Market Street, it is stated in the *Report*, was laid out by William Penn in 1684, under the name of High Street, as a highway for the use of property owners and the general public. Now a "public street," said the Court, in *Pennsylvania Railroad Co.'s* appeal, 12 Harris, 160, "is a public franchise, and cannot be violated except by direct legislative grant," and, as

Black, J., tersely puts it in *Commonwealth v. Erie and North-East R. Co.*, 27 Pa. St., 339, "a doubtful charter does not exist; for whatever is doubtful is decisively against the Corporation." On the sacredness of a highway, Gordon, J., in *Pennsylvania R. R. Co. v. Philadelphia Belt Line R. R. Co.*, 1 Pa. Dist. Rep. 1 S.C. (28th Dec., 1891), said in the strongest terms, "a highway is a public franchise of the most important character, outranking in sacredness, primary right and inviolability any mere corporate franchise. It is an easement belonging to the entire community without discrimination." We shall be greatly interested in following this case to the Supreme Court, and seeing whether the Philadelphia public are still to enjoy the franchise of the High Street of William Penn.

* * *

The Imperial Institute Year Book, 1894.

The new issue of the *Year Book* of the Imperial Institute deserves a passing notice at our hands, and more when space admits. The utility of such a volume is manifest, and is becoming constantly more and more widely recognised. The 1894 issue contains additional matter, both in the way of text and maps and other illustrations, which cannot fail to add to its value. The labour spent upon it by Mr. Hebb has not been spent in vain, and we look forward with confidence to the gradual inclusion of new and varied improvements.

The growth of our Colonies leads naturally to the growth of Constitutional development, which will require noticing in the *Year Book*. When a Colony passes from the embryonic condition of a Crown Colony into the relatively full-fledged condition involved in its erection into a Community with a Representative Government, the fact is a momentous one for the Mother country no less than for the Colony where this change has taken place.

Natal has thus changed, or rather, we would say, developed, and we hope to see the list of such developments increase, as we believe them to be healthy developments, and likely to tend to the benefit of the Mother country no less than of the Colonies. Among Colonists themselves, we sometimes have to remark what may seem curious phases of feeling. Thus, Sir George Dibbs is lately reported to have proclaimed the desirableness of uniting the whole of Australia into one Colony, or, as he seems to have called it, State, under one Governor. This scheme, if it can properly be so called, would, if it were to take concrete form, considerably alter the Australian portion of the *Year Book*. Among the various features which would admit of expansion in the *Year Book*, we may mention one which was suggested at the recent International Medical Congress in Rome, namely, the Climatology of our Colonies, with relation more particularly to their value as Health resorts. Suggestions to this effect were made in the Section of Climatology, where the *Year Book* of the Imperial Institute was brought to the notice of the Hydrological Division of the Congress in a Paper by the Honorary President for Great Britain in that Section, Mr. C. H. E. Carmichael, M.A., F.I. Inst.

Reviews.

The Law relating to Covenants in restraint of Trade. By JOSEPH BRIDGES MATTHEWS, Solicitor. Sweet and Maxwell, Lim. 1893.

The author tells us in his modestly-worded preface that he has been emboldened to embark upon the present venture in consequence of the favourable reception accorded by the Legal Profession to his *Manual of the Law relating to Married Women*; and after a careful perusal of the work under review we are disposed to prophesy that it will fully maintain, if not further enhance, the writer's already acquired reputation. The treatise is not, as only too frequently happens, a mere congeries of cases strung together in chronological order, but a clear, succinct, methodical, and exhaustive exegesis of the doctrines governing this highly controversial department of Commercial Law. Whether we are able or not to agree with Mr. Matthews in the conclusions at which, after much balancing of divergent views, he has arrived, we cannot deny to him the credit of having bestowed upon his subject that painstaking research, analytical acumen, argumentative skill, and lucidity of statement which are often supposed to be the peculiarly exclusive endowment of the higher branch of the Legal Profession.

The critical examination to which the decisions are subjected and the detail in which they are compared and contrasted are of value, not alone in illustration of the principles enunciated, but as a guide to those whose occupation requires them to thread their way through the perplexing mazes of Judge-made law. For who amongst us has not had the unpleasant experience of citing a portion of a Judgment as conclusively decisive of the contention he is upholding in argument, only to be told by the Court that the passage cited does not precisely cover the exact question which came up for decision in the case quoted, and that therefore it is a mere *obiter dictum*, having no binding force? To those so circumstanced, no less than to the student of legal casuistry generally, Mr. Matthews's Treatise will, we doubt not, prove useful. In a future edition it would be well to correct a

printer's error on pages 61 and 159 where Cleasby, B., is made to take part with Lord Abinger and Baron Parke in the decision of *Ward v. Byrne*, the hearing of which occurred so long ago as 1839. The Judgment quoted is that of Baron Gurney. The Treatise is accompanied by an admirable Digest, and some very serviceable Tables of Cases.

A Treatise on the Foreign Powers and Jurisdiction of the British Crown. By WILLIAM EDWARD HALL, M.A., Barrister-at-Law. Oxford: Clarendon Press. London: Henry Frowde, and Stevens & Sons, Limited. 1894.

We have just received this new and interesting work from the well-known pen of Mr. W. E. Hall, whose *Treatise on International Law* is on the shelves of most students of the modern Law of Nations, and all that we can do at this late hour is to call attention to the volume as one peculiarly *ad rem* in connection with the adjourned Debate on the Uganda question. Mr. Hall devotes no small space to the consideration of the subject of Protectorates, of which he says (p. 205) that there is, as he believes, a "cardinal distinction between protectorates of the kind which was formerly familiar, and those which have sprung into existence of late years in the East and in Africa." In fact, "for practical purposes," Mr. Hall holds, "there is no analogy between the two sorts in the essential particular of the authority to which a foreign State must in reason look for due provision of administrative and judicial safeguards of the interests of its subjects." As far as we can see at present, it seems to us that, in regard to some points discussed in his new work, Mr. Hall scarcely does justice to the notice which either the same, or at least similar, points received in Mr. F. T. Piggott's book on *Exterritoriality*, which formed the subject of an Article in the last number of this *Review*. This may be due to the circumstance that Mr. Hall's present contribution to the Literature of this branch of Law was well advanced before the publication of Mr. Piggott's book. In a future number, we hope to be able to give more adequate space to the consideration of some of the topics connected with the interesting subject of Mr. Hall's new volume.

A Digest of Civil Law for the Punjab. By W. H. RATTIGAN, LL.D., Barrister-at-Law. Fourth Edition. Allahabad: *Pioneer Press*. 1893.

We are glad to welcome, though for the moment with but a few words, the new and enlarged edition now before us of our valued contributor's excellent and useful *Digest*. The necessity for paying close attention to the Customary Law of India, which forms the basis of Dr. Rattigan's book, is not sufficiently recognised by the Official mind, which generally refuses to attempt to grasp the fact of its existence, and thus often makes ludicrous blunders in dealing with the older native races. To make everybody's personal Law either Hindoo or Mohammedan would no doubt greatly simplify the Judicial work in India, whether for the High Courts or for the Courts presided over by members of the Civil Service. But it would be, and it is, wherever that course is pursued, grossly unfair to the native who should be neither a Hindoo nor a Mohammedan. Dr. Rattigan knows this, and he knows what a varied population, with varied histories and customs, lies at his door in the Punjab, as he has shewn, not only in this book, but also in his valuable series of Articles in the *Law Magazine and Review*. Such a book as his *Digest* should be undertaken by someone equally familiar with the Customary Law of the Dravidian races of Southern India. Had such a spirit as has been shewn by Dr. Rattigan and Mr. J. H. Nelson prevailed at all widely in India, we should probably not have to record the continued existence of such an anomaly as the judging of the Kullens of Southern India, a Dravidian race, by Hindoo Law, which, as Mr. F. Fawcett says, in an interesting Paper read before the Folk Lore Society, 15th November, 1893 (*Folk Lore*, March, 1894), is "as foreign to them as it would be to Maoris, though it is supposed to represent their customs (Heaven knows why!)." We ought to know what the customs of a particular race in India really are, before we assume that Hindoo or Mohammedan Law "represents" their ancestral customs.

THE LAW MAGAZINE AND REVIEW.

No. CCXCIII.—AUGUST, 1894.

I.—THE STATE AND THE FINANCIAL SITUATION IN INDIA.

THE events of the last few months have placed beyond the pale of doubt the fact that the Finances of India are not only in a thoroughly unsound and dangerous condition, but that they are on a rapid decline, and that no efforts to arrest their downward course are made by those whose duty it is to provide for the safety of the State. The semi-official papers no longer attempt to disguise the situation. Thus, the *Pioneer*, for May 24th last, said:—
“The issue of a new Sterling loan of £6,000,000 is an indication that the financial situation has gone from bad to worse since Mr. Westland framed his budget. In his Statement, the Finance Minister announced that it was not intended to make any addition to the permanent debt of the country. Council's bills, it was hoped, would be sold to the extent of £17,000,000 in the twelve months, while temporary loans would be raised to the extent of £8,300,000, out of which the Secretary of State was to use £6,000,000 to pay off the temporary borrowings of last year. There would have been no reason for preferring the expedient of short dated bills to a regular loan had there not been a hope that, within the next twelve months or so, the situation would improve so materially that temporary borrowings could be made good, and a regular loan dispensed with. The step now taken shews that

"this hope has had to be abandoned. The strain of the new six millions loan will be felt at the beginning of next year, when provision has to be made for the payment of the interest in Sterling with shilling rupees. In what fathoms of financial bog we may find ourselves in twelve or eighteen months it is literally frightful to contemplate."

Turning to this country, we find that the *Times*, on June 25th last, contains, under the heading of "Indian Affairs," the following statement, which deserves special attention:—"Discursive references to bimetallism and pious hopes of a bimetallic concert of nations are a mere paltering with the situation. We strongly insisted on the evils of the absence of individual responsibility which is an ever-present danger to Indian finance. As we pointed out on March 5th, the essence of effective responsibility is that advisers should stand or fall by the advice which they give. The test of effective responsibility is their resignation when their advice is rejected. Amid all the bad Indian finance of the past two years, there is not a single person to whom the test could have been applied. The views of the Finance Minister have differed from those of the Viceroy, and the views of both have been disregarded by the Secretary of State. The Secretary of State, in his turn, is responsible to his colleagues, not for good finance, but for adjusting Indian finance to the Parliamentary convenience of the Ministry at home."

Thus, while the *Pioneer* points to the fearful depths into which we are being drawn, the *Times* clearly shews that the Indian Secretary of State, subjected as he is to the influence of the Ministry at home, is powerless to stave off the danger, although that danger has been created by his own action, as supreme controller of Indian affairs. This startling avowal, moreover, is unaccompanied by any suggestion as to how the vessel of the State is to be saved from the wreck of bankruptcy. The man at the helm, whose

personal safety is provided for, is seen to be steering straight for rocks and shoals, and common sense bids that he should at once be removed, and the vessel be placed under the control of men personally interested in her safety; but not a voice is raised for a change so obviously and so urgently needed. The two hundred millions of British subjects whose fortunes are thus jeopardised, have no voice in the matter, while the influential minority at home, who might save the State, seem blind to the peril to which they and their Indian fellow-subjects are exposed.

The line of conduct which the Government have latterly pursued with regard to the finances of India, indicates an intention to proclaim bankruptcy, rather than submit to the hard ordeal which alone could save the credit of the State, namely, the exercise of strict retrenchment and economy, the avowal of error, and the acceptance of unpalatable reform. While it is earnestly to be hoped that no such calamitous intention is entertained, the disquieting supposition acquires considerable strength from other parts of the Article in the *Times*, where the writer, after referring to the heavy gold obligations contracted by the Indian Government, says: "How those obligations are to be met, and how those menaces of insolvency are to be averted, are questions which demanded an answer in the last two Indian budgets, and they are questions to which neither of the last two Indian budgets attempted to reply." The Article then goes on to shew that no satisfactory reply was possible, and forcibly demonstrates this fact in its concluding paragraph. Referring to the lecture which the late Indian Finance Minister delivered in the City on the 15th June last, the writer says: "Sir David Barbour (who has regained his right to speak his mind) warns the British nation that the Government of India is at present in a position of great financial difficulty. Passing over currency devices and palliatives in regard

“to which he is more or less doubtful, he comes to
 “the plain and immediate duties which that position
 “imposes on the Indian Government. The first is to
 “‘enforce strict economy.’ This the Government of India
 “cannot do, so long as it is compelled to defray all sorts of
 “charges of supervision and control in England, which no
 “other Dependency or Colony of Great Britain would be
 “called to pay. The second duty of the Indian Government
 “is to ‘manage its financial affairs with greater forethought
 “and prudence.’ This it cannot effect so long as there is no
 “individual responsibility for their management, and the
 “ultimate decision in financial measures of the greatest
 “importance is avowedly given not in the interests of
 “the Indian taxpayers. Its third immediate duty, according
 “to Sir D. Barbour, is to ‘avoid at all hazards any increase
 “of the home charges and of its Sterling liabilities of what-
 “ever kind.’ This it cannot avoid so long as the current
 “Indian payments in England continue to be met, in whole
 “or in part, by fresh issues of Sterling loans.”

If we assume the correctness of the statements contained in the *Times* and the *Pioneer* (neither of those papers being likely in any degree to exaggerate the shortcomings of the Government), the situation may be summarised as follows:—

The Secretary of State, who exercises supreme control over the Indian administration, has, for years, sanctioned expenditure greatly in excess of the revenue, and raised loans for meeting the deficit.

A great deal of this expenditure has been incurred, not in supplying Indian wants, but in meeting the Parliamentary convenience of the Ministry at home—that is, in assisting the British Cabinet to acquire Parliamentary votes for its support.

The Indian debt has thus been, and is still being, unfairly increased; and the Secretary of State is unable to arrest that evil course, owing to the peculiar system of

government imposed on India—a system which has destroyed individual responsibility, and made it impossible for the head of the Government to enforce strict economy, to manage financial affairs with greater forethought and prudence, and to avoid increasing the home charges and Sterling liabilities of the Indian Government.

Reform, therefore, has become urgent; every hour's delay aggravates the situation and adds to the difficulty of rescuing the finances from their perilous condition. The system of government which produced this crisis must obviously be abolished, and an influence be brought into existence (as advised by the late John Stuart Mill in 1858) that will protect the Indian revenue against illegal demands, such as those which the present system has encouraged and supported. But who is to exercise this protective influence? The duty was assigned by Act 106 of 1858 to a trusted adviser of the Queen; and the plan has proved a disastrous failure, simply because the powerful instinct of self-preservation led the Secretary of State to sacrifice Indian interests to the safety of the Cabinet on which his official existence depends. On the other hand, experience and human instinct urge that those who contribute to the revenue raised for their benefit, are best qualified to decide how its expenditure may effectually accomplish its purpose. This brings us face to face with Popular Representation—a system which has ameliorated the condition of every society where it has been introduced, but which the Anglo-Indian official has denounced as unsuitable for India.

So long as the Indian populations had faith in our promises and good intentions, it would, perhaps, have been unwise to initiate a revolutionary measure and concede rights which were not claimed; but great changes have occurred during the last thirty-four years. Our faith solemnly pledged to our Indian fellow-subjects, and our Treaties as solemnly entered into with our Indian allies,

have deliberately been violated by us.* Our Law Courts have been converted into instruments for enforcing illegal and groundless claims of the Government;† and the people are still vainly appealing to our Proclamation of 1858, when our Gracious Queen, speaking in the name of the British nation, said:—"We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and these obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil."

In short, we no longer possess the confidence of the people, and a disposition is spreading amongst them to combine against our action and our spurious Indian legislation whenever these are considered oppressive and unjust. Western education, moreover, has made rapid progress all over India; political associations have been formed in every Province, claiming for the people the right to participate, to a reasonable extent, in the administration of their country; and Popular Representation has, for the last twelve years, been actively and widely discussed by the educated classes, as offering the only legitimate means by which the people could obtain justice. The situation, therefore, has very materially changed since 1858; and while the opinion of the Anglo-Indian official must always be an important factor in the adoption of reform, views based on a state of things which no longer exists cannot safely be accepted as a guide in the altered conditions which now prevail.

* *Law Magazine and Review*, No. CCLXXXVIII., May, 1893, p. 164, *The Bengal Tenancy Act*; also No. CCXC., November, 1893, p. 97, *Our Indian Feudatories*, &c.

† *Law Magazine and Review*, No. CCLXXXIV., May, 1892, p. 183, *The Fusion of the Executive and Judicial Powers in India*; also No. CCLXXXV., August, 1892, p. 259, *Judicial Independence in India*.

The introduction of Popular Representation into the Government of India, would need much circumspection and forethought. In other countries the system has encouraged the masses of the people to invade the legitimate rights of the industrious and the thrifty, and this has occurred especially in communities where numbers formed the main basis of the representation. The object of a Parliament being to allow the people a voice in the expenditure of the revenue paid by them, equity demands that each elector's influence should be proportioned to his contribution, and that his contribution should fairly represent his stake or interest in the country. It must have been in view of some such principle that the fiscal element was introduced in the qualification of electors; and a careful adherence to that principle might save us in India from the troubles which have arisen elsewhere from its imperfect application. The Electoral body might also with advantage be confined to the classes who are capable of understanding the aim and the benefits of Popular Representation, provision being simultaneously made for extending the franchise with the spread of education.

In devising means for saving India from the ruin with which she is now threatened, it should, at all events, be carefully borne in mind that her critical condition is the result, as the writer in the *Times* so clearly demonstrates, of her pernicious system of government, in which the exercise of power being released from its legitimate responsibility, reckless extravagance receives powerful encouragement, and economy becomes practically impossible. The system contains, in fact, a germ of destruction which no patching-up, no change of form, no partial concession to principle, can eradicate; it must be entirely abolished before India can be liberated from the incubus under which she is being crushed. It appears, however, that the Indian authorities,

in order to prolong the period of irresponsible power, are about to demand that the British Government should guarantee the debt of India, and this demand is to be accompanied with the threat that, unless it be conceded, our Indian Empire must crumble and fall into dissolution.

The *Pioneer*, for June 15th last, says:—"The most astonishing fact about the present situation is that the credit of the country for borrowing purposes keeps up as it does. . . . We are paying our way at home—as regards, amongst other charges, the interest on money borrowed—by borrowing more. By degrees it must become perceptible that, no matter how exalted the morality of the Indian Government may be, there may come a time when the Indian Government will not be able to act up to the principles on which till now its credit has reposed. New difficulties will be found in placing on such terms as we have been used to, loans that depend for their security on the resources of the Indian Government. Then will borrowing become possible only with the guarantee of the British Government, and the Government of England will have to carry on the Indian administration or proclaim a dissolution of the Empire."

To hear of the exalted morality and the principles of a Government who have deliberately and persistently committed the unprincipled act of appropriating and wasting the security they had pledged to their creditors, sounds strange; but criticism in the present conjuncture can be of little use; and if the attempt, foreshadowed in the above extract, to prolong irresponsible government in India, is to be frustrated, opposition must be prompt and energetic, seeing that the attempt to obtain the guarantee will probably receive the support of several influential classes, namely:—

Those who have invested their money in Indian Securities;

The political supporters of the existing Ministry, and of previous Indian Secretaries of State, who misused the power intrusted to them ;

Indian officials, especially in the higher ranks, who doubtless perceive that the reduction of their salaries and the abolition of dispensable appointments has become imminent ;

Lastly, all who derive profit from commercial and financial transactions with the Indian Secretary of State, either for the supply and shipment of stores or for other requirements of the Indian Government.

On the other hand, the guarantee would impose fresh liabilities on the British taxpayer ; and the working classes, which form the bulk of our constituencies, would certainly not consent to bear additional taxation for the benefit of the classes just mentioned. It is to be feared, however, that the measure might be delusively represented as constituting a merely nominal risk ; and that some boon or concession, simultaneously offered to the electors, might weaken their opposition to the proposal. It is important, therefore, that accurate information on the subject should be imparted to the British public as early as possible.

To India, the British guarantee, by enabling irresponsible government to be prolonged (although its pernicious character has been exposed and is now universally admitted), would prove an overwhelming misfortune. Her attenuated resources would be further reduced, and the popular discontent and irritation caused by the pressure of taxation, and by the spoliative measures directed against the landed and cultivating classes, would precipitate the fatal result of irresponsible rule—an end which is already within sight. That this statement is far from being an exaggeration will be seen by a reference to the semi-official organs, both in India and at home. The *Pioneer*, for June 21st last, in the course of an Article

upon the present situation, says, with regard to land:—
 “It is certain that the present state of things, which
 “cannot but result in a most dangerous situation, must
 “at any cost be remedied. A few years more will
 “witness the almost complete ruin of the old pro-
 “prietors, who will be turned into a class of discontented
 “paupers, who see their only hope in social confusion,
 “converted thus into ready victims of the wiles of the dis-
 “loyal agitator. Much mischief has been done in the
 “past, but the books of the sibyl are still for sale, and, if
 “we neglect the chance, we shall pay dearly later
 “for our neglect. It is more difficult to say what
 “measures should be taken to remedy the existing state of
 “things.” Then the *Times*, for July 16th last, referring
 to the exemption of Manchester goods from import duty
 in India, says:—“It is felt that, in order to maintain that
 “exemption India will be forced to go on borrowing in
 “gold with which to pay her way. Several weeks ago we
 “said that it was almost impossible for England to realise
 “the bitterness of the Indian public feeling on this
 “question. Articles in the native press which, a year
 “ago, would have excited general indignation, are now
 “applauded by the British journals in India.” Then,
 after quoting some trenchant criticism from the *Madras*
Times and the *Pioneer*, the writer says:—“We confine our
 “quotations to passages from two of the most patriotic
 “British organs in India. It could serve no good purpose
 “to reproduce the language of indignation from the native
 “press.”

In conclusion, I would remind the reader that the danger
 in which India is placed is the direct result, as the *Times*
 so clearly demonstrates, of the pernicious system by which
 India is governed—a system which has destroyed individual
 responsibility, and is fast leading the State to a disastrous
 catastrophe. It therefore behoves all who perceive the

danger to take the matter into serious consideration with the view of obtaining reforms that will remove the causes of the present troubles and place the future administration of the country on a basis of sound statesmanship, security, and justice.

J. DACOSTA.

II.—CAMBRIDGE UNIVERSITY JURISDICTION.

TO Lawyers the chief interest in the Vice-Chancellor's Jurisdiction lay in an ancient Charter, undisturbed and unreformed since the third year of Queen Elizabeth's Reign. Few Lawyers have ever referred to the Charter, and probably they, like the public at large, have merely had their curiosity awakened from time to time by sensational accounts appearing in the Public Press, inspired by somebody whose activity is prone to find expression rather in faulty diagnosis than in any suggestion of remedy. The recent case of Daisy Hopkins was as a fact the action which fanned the slumbering embers of discontent, supposed to lie in the hearts of the non-academic population of the town of Cambridge.

The Charter* granted to the University in Queen Elizabeth's Reign runs as follows:—That the Chancellor, Masters, and Scholars of the University of Cambridge by themselves or their deputies, officers, servants and ministers from time to time, as well by day as by night, at their pleasure, might make scrutiny, search and inquisition in the town and suburbs, and in Barnwell and Sturbridge, for all common women, bawds, vagabonds, and other

* Cf. also Art. by J. Parker Smith, M.A., on *University Representation*, in *Law Magazine and Review*, Nos. CCL., November, 1883, p. 21, and CCLI., February, 1884, p. 143.

suspected persons coming or resorting to the town and suburbs or the said fairs, and punish all whom on such scrutiny, search and inquisition they should find guilty or suspected of evil by imprisonment of their bodies, banishment or otherwise, as the Chancellor or his vice-gerent should deem fit. And the Mayor, bailiffs and other officers and ministers of the town, and all other persons whatsoever, were commanded not to impede such scrutiny, search and inquisition, but on request of the Chancellor or his vice-gerent aid and assist therein, under pain of contempt and incurring the indignation of the Queen, Her Heirs and Successors;—from which it will be seen that the Vice-Chancellor could imprison any common woman, bawd, or vagabond within the prescribed limits when found guilty or suspected of evil by the Court.

In the month of December, 1891, Daisy Hopkins was imprisoned, but the conviction was quashed because the formula used in the charge (one in vogue from very early times), namely, "walking with an undergraduate," was held by Lord Chief Justice Coleridge and Lord Justice Smith to disclose no criminal offence, "such person" not being, in the words of the Charter, "suspected of evil."

The Press was able to rouse a certain class of public opinion against these powers possessed by the University Court, and it enlisted the sympathy of those very puissant members of Parliament, who are hotly opposed to anything which they think can possibly be converted into the protection of impurity.

This party was ably assisted by kindred spirits to whom any law 300 years old must of itself, from its mere antiquity, be bad and anomalous.

Perhaps the idea that any change deferred would mean total loss of any University privilege in these matters was a potent factor in causing the University to propose to the

Town the promotion of a Bill partly repealing this special jurisdiction. Be that as it may, the Town of Cambridge came to terms with the University, and the Bill drafted and approved by both bodies has now received the Royal Assent.

So far as the Undergraduate is concerned, we cannot but regret that any change is to be made, judging most naturally that any change of a *régime* which has for so long worked so well must be a change for the worse.

What, then, will be the change?

The powers conferred by the Charter which we have quoted are repealed *in toto*, and in their stead the powers given by a Statute in the Reign of George IV., viz., 6 George IV., cap. 97, to the University of Oxford, are to be extended to the University of Cambridge.

To put the matter shortly, an Act was passed in the fifth year of the Reign of George IV. which applied to Great Britain, and which gave, among other powers, the authority to constables to take up any prostitute standing in the public Streets and behaving in a disorderly manner, and the Act of 6 George IV., cap. 97, gave power to the University of Oxford to appoint constables with the same powers as other constables, who could take up any such person not giving a satisfactory account of herself (not necessarily behaving in a disorderly manner), and treat the person so taken up as a "disorderly person" under 5 George IV., cap. 83, the offender being brought before the Magistrates and punished according to the Act. The Vice-Chancellor is a Magistrate *pro tem.*, *ex officio*, and naturally there is no reason why many of the Magistrates should not be University Graduates. It will at once be seen that the effect of this is to place on a very different footing the discipline of the streets. In the first place the whole episode takes place in the Borough Police Court, the prisoner is tried by a mixed bench of Town and University Magistrates, and the

argument that the Court is a kind of Star Chamber can never be put forward any more. Still, the quiet, unostentatious procedure of the University Court, which maintained a discipline in the streets of the town, is to be done away with, and it is a matter of conjecture whether the change will be found to work as well as the old order of things.

Those who, like the present writer, are in favour of special Criminal jurisdiction for Cambridge, will probably think that the Act now placed upon the Statute Book is rightly a private Act, and that it will bring about the settlement of a vexed question which only concerned the University and the Town of Cambridge. To them it is a matter of little moment whether the Vice-Chancellor or the Borough Magistrates exercise the jurisdiction. On the other hand, to those who are adverse to these special Criminal powers the subject will be perhaps painfully interesting. Some of these devoted the best years of their political life to blotting out from the Statute Book the principle contained in the Act, and now, when they see it re-indorsed by the House of Commons by means of a Private Bill, their victory of a few years ago must seem rather a mockery. The real interest lies, therefore, not in the Act itself, which simply effects a transference of jurisdiction, but in the political sincerity of the Town of Cambridge and in the action of the House of Commons. We had always been under the impression that the non-academic population of Cambridge viewed the Charter of Queen Elizabeth's time as a relic of barbarism, a standing menace to freedom, and a glaring personal insult to themselves. When we recall the speech made by the Member for Cambridge in the House of Commons in 1873, on behalf of the repeal of the Contagious Diseases Acts, we may take it for granted that he was echoing the sentiments of his constituents. One of his arguments ran thus:

"Our present position is entirely wrong; it is inconsistent with reason and logic. We are professing to benefit a particular class, and refuse that benefit to a far more numerous class;" and, contrasting the two sexes, he said: "You do not treat them alike; that is obviously unjust." These sentiments were seconded by Mr. Mundella. It is somewhat of a disappointment to find that, after all, the Town of Cambridge were only jealous of the University powers, and that all they really desired was to be able to use powers themselves which they deprecated from such a high moral standpoint in the hands of others. Be it said at once that the University of Cambridge was always consistent, and that by petition and otherwise it had supported the Acts which Mr. Fowler strove so hard to repeal.

The House of Commons, in 1885, was persuaded by Mr. Stansfeld and his followers to repeal the Contagious Diseases Acts. This was the result of many years of agitation by the party under the leadership of the Member for Halifax, and also of the evidence taken before two Royal Commissions. There were many reasons why the House resolved to repeal these Acts, and very prominent amongst them were: firstly, that argument of Mr. Wm. Fowler already quoted; secondly, the possible abuse of any discretionary power in the hands of the police; and, thirdly, as Mr. G. W. E. Russell rhetorically put it, "What was his sin? What was hers? And how unequal is their fate! At any rate, whatever the pangs of conscience, he has still his friends around him and a position in the world; surely that difference in the sexes is enough!"

Now, the Cambridge Act legislates for a class; it places a discretionary power in the hands of the police, and it treats man and woman differently. Under these circumstances, all can at least understand the action of Mr. Webb, who first moved an amendment because, he said, what was required by one University was required by all. We can understand

that he should be supported by Mr. Stansfeld, Mr. Dodd, Mr. Labouchere, and Mr. J. Stuart. Again, we can understand that he should have been opposed by Lord Randolph Churchill, Sir John Gorst, and Sir Edward Clarke, for they had always supported special legislation, but that only 157 members should have been found in the present Democratic House of Commons to vote against the Bill seems difficult to account for.

The present writer, who is glad that the Town of Cambridge has retained the powers given up by the University, must be permitted to express the hope that when the time comes for the other younger and growing seats of learning to ask for similar special protection, the theory of Home Rule so opportunely brought to bear upon the Cambridge Corporation Bill may be extended to those younger corporations.

The non-contentious portion of the Act, which concerns the University, has more *raison d'être*. The Vice-Chancellor has, till now, under different statutes, held absolute power over the licences for Theatrical and other exhibitions. These exceptional powers have been a source of considerable feeling in the Town, and they are, by the new Act, transferred to the jurisdiction of the County Council for Cambridge and the Licensing Justices of the Borough.

The following is the text of that portion of the Act dealing with University Jurisdiction :—

“ So much of the Charter as is recited and set forth in the Preamble to this Act, and so much of the Act of the thirteenth year of the reign of Queen Elizabeth, chapter 29, intituled ‘ An Acte for Thincorporatōn of bothe Thuniversityes,’ and so much of any other Act as confirms or preserves that portion of the recited Charter is hereby repealed without prejudice to anything already done and suffered. .

“ The said recited sect. 3 of the said Act, 6 Geo. IV., cap. 97, shall extend and apply to the University of Cam-

bridge, and, subject to the provisions of this Act, shall have effect within the precincts of the said University as if the words 'either of the said Universities of Oxford and Cambridge' were inserted therein in lieu of the words 'the said University of Oxford.'

"The Proctors and pro-Proctors of the University of Cambridge shall, by virtue of their respective offices, have the powers vested in constables duly appointed and sworn under or by virtue of sect. 1 of the said in part recited Act, 6 Geo. IV., cap. 97, and shall have power, for the maintenance of discipline amongst members of the University, with or without any constables appointed under the same Act, to enter any premises licensed for the sale of intoxicating liquors, or any premises kept or used for public entertainment of any kind during the performance of such entertainment, or so long as any of the public are assembled there.

"Sect. 10 of the Act, 'For regulating Theatres,' passed in 1843 * (6 and 7 Vict., cap. 68), is hereby repealed so far as it relates to the University or Town of Cambridge or the neighbourhood thereof.

"The County Council for the County of Cambridge may at any time revoke any licence for the public performance of stage plays within the Borough on the

* 6 & 7 Vict., cap. 68, § 10. "Provided always and be it enacted that no such licence shall be in force within the precincts of either of the Universities of Oxford and Cambridge, or within 14 miles of the city of Oxford or Town of Cambridge, without the consent of the Chancellor or Vice-Chancellor of each of the said Universities respectively, and that the rules for the management of any theatre which shall be licensed with such consent within the limits aforesaid shall be subject to the approval of the said Chancellor or Vice-Chancellor respectively; and in case of the breach of any of the said rules, or of any condition on which the consent of the Chancellor or Vice-Chancellor to grant any such licence shall have been given, it shall be lawful for such Chancellor or Vice-Chancellor respectively to annul the licence and thereupon such licence shall become void."

complaint in writing of the Vice-Chancellor or the Mayor sent to the Clerk of the said Council, who shall forthwith, upon the receipt of such complaint, summon a special meeting of the County Council to consider the same, and give written notice of the complaint to the person complained of, in order that he may make his answer or defence at such special meeting.

“The Licensing Justices for the Borough may at any time revoke any Licence within the Borough granted in pursuance of Part IV. of the Public Health Acts Amendment Act, 1890, on the complaint in writing of the Vice-Chancellor or the Mayor, sent to the Clerk to the Justices, who shall forthwith upon the receipt of such complaint summon a special session of the Licensing Justices to consider the same, and give written notice of the complaint to the person complained of, in order that he may make his answer or defence at such special session.

“Sect. 16 of the Cambridge Award Act, 1856,* shall henceforth be read and have effect as if the words ‘(except during the period of Midsummer Fair or in the Long Vacation),’ and the words ‘Vice-Chancellor and the’ were expunged and omitted therefrom.

“Nothing in this Act contained shall affect any right, power, or privilege of the University, or of any Court or Officer of the University, except so far as the same is hereby expressly abolished or modified.”

FRANCIS H. CRIPPS-DAY.

* 19 & 20 Vict., cap. xvii., § 16 (Local and Personal Act). “No occasional public Exhibition or Performance, whether strictly theatrical or not other than Performances in Theatres which are regulated by the Act 6 & 7 Vict., cap. 68, shall take place within the Borough (except during the period of Midsummer Fair or in the Long Vacation) unless with the consent in writing of the Vice-Chancellor and the Mayor, and every Person who shall offend against this Enactment shall be liable to forfeit a sum not exceeding £20, recoverable in like manner as Penalties imposed by this Act.”

III.—THE FUNCTION OF EVIDENCE IN ROMAN LAW.—III.

OTHER matters connected with the scope of the present inquiry which are worthy of notice are the capacity of witnesses, the relevancy of evidence, the respective provinces of oral and written evidence, the function of presumptions, and registration.

Witnesses.

The most striking rule of Roman Law is that in order to constitute *plena probatio* two witnesses were necessary.* Whether this was always the case cannot be affirmed with certainty, but the law was certainly established by a constitution of Constantine in 334, probably in imitation of the rule of the Mosaic law.† Where no number was named by the law two were sufficient.‡ This was subject to the exceptions that in treason torture could be ordered on the evidence of a single witness,§ that the evidence of a notary was usually equivalent to that of two ordinary witnesses, and that in certain cases a larger number than two was required. Three witnesses were required for an inventory,|| for

* Unless the *semplena probatio* of one witness were supplemented by oath of the party or torture. Where the *probatio* was incomplete it was not the right but the remedy that was affected. *Non jus deficit sed probatio*, as the Civilians expressed it.

† *Cod. iv.*, 20, 9, 1.

‡ *Dig. xxii.*, 5, 1, 12. According to Klotz and others no more than ten witnesses were allowed in a trial before *recuperatores*. Cicero *pro Caccina*, c. 10, is relied on as the authority for this statement.

§ This is, as the English lawyer will observe, in direct opposition to the practice on trials for treason in England since the reign of William III. By the law of the Roman Catholic Church a single witness was sufficient to prove a charge of heresy. See Malletus, *Aurum Moralis Theologiae* (Turin, 1656), and other authorities.

|| *Nov. i.*, 2, 1.

comparison of the handwriting of a *chirographon*,* for giving an instrument of hypothec (*idichiron*) priority as a public document,† for a *donatio*,‡ for proof of adultery,§ for recognition of natural children as legitimate,|| and for a *depositum* or *mutuum* made in writing.¶ Five were required for a *mancipatio*, for *codicilli*,** for a grant of freedom, for manumission orally or by letter, for the destruction of the title-deeds of a slave,†† and for proof of cognation.‡‡ Seven were required for divorce,§§ and for a will||| (with some exceptions). Ten were necessary for the old ceremony of *confarreatio*. A *fideicommissum* might be established by *codicilli* witnessed by fewer than the statutory five, or even by none at all, but in this case the *heres* was put to his oath, and the claimant had to take the oath *de calumniâ*.¶¶ The titles *De Testibus* in the *Digest**** and *Cod*††† and *Novel* xc.‡‡‡ contain numerous rules as to the capacity of witnesses, in general accordance with obvious principles of justice, but at times somewhat strange to those accustomed only to English practice. In general they apply to both civil and criminal procedure.§§§ Some of the more important rules are as follows, excluding the law of witnesses to wills, which was to some extent

* *Cod.* iv., 21, 20.

† *Cod.* viii., 18, 11; *Nov.* lxxiii.

‡ *Leon. Const.* I.

§ *Nov.* cxvii., 15.

Nov. cxvii., 2.

¶ *Nov.* lxxiii.

** *Cod.* vi., 36, 8, 3.

†† *Cod.* vii., 6, 1, 1, 2, and 11.

‡‡ If there was written evidence three were sufficient, *Cod.* iv., 20, 1.

§§ *Dig.* xxiv., 2, 9.

||| *Inst.* ii., 10, 3. The number of witnesses to a will was afterwards reduced by *Leon. Const.* xli. to five in cities, three in the country.

¶¶ *Inst.* ii., 23, 12; *Cod.* vi., 42, 32.

*** xxii., 5.

††† iv., 20.

‡‡‡ The immediate occasion of the promulgation of this *Novel* (539) is stated to be a fraud committed in Bithynia, where a pen had been put into the hand of a testatrix after her death, and her hand had been guided to make the sign of the cross as a signature to her will.

§§§ *Non solum in criminalibus causis sed etiam in pecuniariis litibus*, *Dig.* xxii., 5, 1, 1. The term *pecuniariis litibus* is probably used because in the majority of civil actions the claim is reducible to a money value.

different in practice, though in principle the same.* Roman Law tended to the imposition of legal disqualifications, the tendency of modern systems is, on the contrary, to admit all persons to give evidence for what it is worth. Most of the circumstances which would have disqualified in Roman Law now only affect the value of the testimony, not the capacity of the witness. The disqualifications were either absolute or relative. The principal absolute disqualification was personal interest in the cause of action. The maxim of law was, in the words of Pomponius, *Nullus idoneus testis in re sua intelligitur*.† This was extended to persons standing in certain defined relations to any party to an action, *e.g.*, those connected by blood or affinity as far as cousins, husbands and wives, and patrons and freedmen.‡ The incapacity of a party to give evidence in his own cause must be of course always taken as subject to his liability to deny the cause of action on oath. Other absolute disqualifications were infancy,§ convictions for crimes of a certain kind,|| being an accomplice,¶ or affected with *infamia*,** compulsion,†† *inimicitia*,‡‡ the status of slavery where torture had not been applied,§§ and, at one period, heresy.|||

* *Nov. xc.*, 3.

† *Dig. xxii.*, 5, 10. The same principle is found in other places, for instance, *Cod. iv.*, 10, 10.

‡ *Dig. xxii.*, 5, 4.

§ In civil cases witnesses must be above the age of puberty, *Dig. xxii.*, 5, 3, 5, in criminal they must be twenty years of age, *Dig. xxii.*, 5, 20.

|| *Dig. xxii.*, 5, 20. Adultery and extortion or taking bribes were special disqualifications, *Dig. xxii.*, 5, 15 and 18. A person convicted of *calumnia* was a good witness, *Dig. xxii.*, 4, 13.

¶ *Cod. iv.*, 20, 11. ** *Dig. xxii.*, 5, 3, 5. See Greenidge, *Infamia*, 166.

†† *Dig. xxii.*, 5, 6.

‡‡ *Cod. iv.*, 20, 17; *Nov. xc.*, 7.

§§ *Dig. xxii.*, 5, 7.

||| Justinian originally excluded *Borboritæ*, *Samaritæ*, Jews, and other heretics, *Cod. i.*, 5, 21. They were afterwards admitted by *Nov. xlv.* for the curious reason that the evidence of a heretic was given on behalf of the State, which was orthodox.

One who had given evidence previously against the same accused was disqualified,* as was, unless in causes affecting domestic matters, a member of the household of the accuser.† A speech to discredit witnesses of the other side was, at any rate in the time of Cicero, known as *interrogatio testium*,‡ and attacked either their qualification or their credit. Relative disqualifications were those of an advocate, who could not give evidence in a cause in which he had been engaged,§ of accuser and accused in a criminal case during the pendency of the case,|| and of a woman, who was excluded in most claims arising out of contract.¶ Certain persons were relieved from giving oral testimony by reason of their position in the State, such as bishops** and soldiers,†† or of their age and infirmity.‡‡ The attendance of witnesses was originally a matter concerning only the private interest of the party who required their attendance. If he wanted them, he must summon them himself by the use of the legal phrases *testes estote* or *licet antestari*.§§ By a

* *Produci testis is non potest qui ante eum reum testimonium dixit*, Dig. xxii., 5, 23. This passage has led to considerable difference of opinion. The question is whether it means what has been stated above, or the reverse, *vis.*, that one against whom the accused had given evidence was disqualified. The latter sense appears the more reasonable, but the words as they stand seem grammatically to imply the meaning given in the text. For *eum reum* Heineccius would read *eam rem*.

† Dig. xxii., 5, 24.

‡ This must be distinguished from the *interrogatio coram testibus*, mentioned in Dig. xxiv., 3, 58, and other places.

§ Dig. xxii., 5, 25.

|| Nov. xc., 7.

¶ Leon. Const. xlviii. This view of the incapacity of women as witnesses was followed by Canon Law, and existed in Scotland to a considerable extent until it was abolished by the Titles to Land Consolidation Act, 1868. The only instance of it in England appears to be their disability as witnesses to prove a man a villein, *mulieres ad probationem status hominis admitti non debent*, Co. Litt., 6b.

** Cod. i., 3, 7; Nov. cxiii., 7.

†† Dig. xxii., 5, 8.

‡‡ *Ib.*

§§ See Horace, *Sat.* i., 9, 76. Hence the old use of *antestatus* to mean a witness.

constitution of Justinian their attendance was secured by *fidejussio* if they were willing, by oath if they were unwilling, but in no case could they be imprisoned so as to secure their testimony.* Leave of the Court to summon witnesses appears from Pliny to have been given to the prosecutor at an earlier date than to the accused.† Whether witnesses for the accused could be compelled to appear was doubtful, at any rate in Cicero's time.‡ The summons was always an act of the court,§ whether the witness were willing or unwilling.|| The witness was entitled to reasonable expenses (*sumtus competentes*) at the cost of the party summoning him,¶ and was not to be put to any expense himself.** He could not be detained more than fifteen days.†† The examination was by the Judge.‡‡ In the examination leading questions were not to be asked.§§ In the absence of evidence on one side, where the witnesses had been duly summoned, the Judge was to proceed as though they had appeared.||| The oral evidence¶¶ of a witness was naturally regarded as of greater weight than his written deposition.*** Hearsay evidence of facts of ancient date was, perhaps, admissible where no more direct evidence was attainable.††† It seems probable that a witness was not bound to criminate himself by his answers.‡‡‡

* *Cod. iv.*, 20, 19. † *Letters*, v., 20; vi., 5. ‡ *Pro Rosc. Amer.*, c. 38.

§ Cicero, *Verres*, ii., 26; Quintilian, v., 7, 9. The witness so summoned was sometimes called *adlegatus*.

|| *Nov. xc.*, 8.

¶ *Cod. iv.*, 20, 11.

** *Cod. iv.*, 20, 16, 1.

†† *Cod. iv.*, 20, 19.

‡‡ *Dig. xxii.*, 5, 3, 3.

§§ *Dig. xlviii.*, 18, 1, 21.

||| *Nov. xc.*, 9.

¶¶ *Testimonium, testificatio, depositio* (the latter being also used for a written deposition).

*** *Dig. xxii.*, 5, 3, 3.

††† *Dig. xxii.*, 3, 28. Cicero calls such evidence *testimonium de auditione*, and says that it was allowed *apud veteres*.

‡‡‡ This was certainly so in the case of treasure-trove, the finder of which was not bound to inform against himself, *Dig. xlix.*, 14, 3, 11, and in the case of production of a compromising document, it being enacted that the producer was to be held harmless. *Cod. iv.*, 21, 22.

Witnesses were to be weighed, not counted.* They could not be produced more than three times after an *exceptio dilatoria* unless an oath were taken that the production was not for the purpose of fraud.† At what time it became necessary to give evidence on oath is not known; the earliest text in which the oath is regarded as necessary is the constitution of Constantine in 334, already referred to as making two witnesses necessary.‡ Witnesses to character (*laudatores*) were in use in criminal trials as early as the time of Cicero.§ Whether any procedure like the *confrontatio testium* of the Canon Law was known in Roman Law does not appear from the texts.

Perjury by a witness, unlike perjury by a party, was punishable by the criminal law. That such punishment was, however, of late origin appears by the inclusion of penalties for perjury in the *Lex Cornelia de Falsis*, where it is grouped with the penalties for forgery and similar crimes. In many cases the punishment was summary. A witness giving varying or lying evidence was liable to summary punishment by the Judge at the trial.|| A civil action also lay against the witness.¶ It was punishable by death or deportation to procure by false evidence the conviction of a person of a capital offence.** A witness giving or withholding testimony for money was liable to deportation,†† and the party suffering from the corruption of the witness was entitled to *restitutio in integrum*.‡‡ The punishment of

* *Dig. xxii., 5, 21, 3 (non enim ad multitudinem respici oportet sed ad sinceram testimoniorum fidem).*

† *Nov. xc., 4.*

‡ *Cod. v., 20, 9, pr.* The same principle was strictly observed in the Canon Law, and the obligation of taking an oath as witness was irremissible even by the Pope.

§ *Verres*, ii., 5, 22; *pro Balbo*, c. 18.

|| *Dig. xxii., 5, 16.*

¶ *Cod. iv., 20, 13.*

** *Paulus, Sent.*, v., 23, 1; *Dig. xlviii., 8, 16.*

†† *Dig. xlviii., 10, 1, 2, and 13.*

‡‡ *Dig. xlii., 1, 33.*

perjury was sometimes denounced against those guilty of crimes only slightly analogous, *e.g.*, against any one exacting an oath of *perseverantia* from an actress.* Priests and deacons for perjury in civil cases were liable to relegation to a monastery for three years, in criminal cases to *legitimæ pænæ*, persons in minor orders were subject to torture.† It was not perjury to discontinue an action after an arrangement had been made between the parties, even though an oath *judicio sisti* had been taken.‡ From allusions in the classical writers perjury seems to have been a very common offence.§

Relevancy and Sufficiency of Evidence.

It is characteristic of the kind of cases which came before the Roman civil tribunals that all the examples of irrelevant evidence recorded appear to have arisen on claims to slaves and to have been decided at the same period, towards the close of the third century. It was irrelevant to shew that the father was free as evidence of the freedom of the daughter, for on the principle *partus sequitur ventrem* she might be a slave and her father free.|| It was relevant to shew that a daughter was born after the mother became free, but not that her brothers were unquestionably free.¶ It was irrelevant to shew that Glycon's mother and brother were slaves, for one in a family might have obtained freedom.** As to sufficiency of evidence a wide discretion was left to the Judge, subject to a few general rules, such as that as to a due number. Principles of practice were laid down by Callistratus *de Cognitionibus*—incorporating

* Nov. li.

† Nov. cxxiii., 19. By Leon. Const. lxxvi., the first penalty was made applicable to all ranks of the clergy.

‡ Dig. ii., 8, 16.

§ *e.g.*, *Non bene conducti vendunt perjuria testes.* Ovid, *Amores*, 1, 10, 37.

|| Cod. iv., 19, 10.

¶ Cod. iv., 19, 17.

** Cod. iv., 19, 22.

rescripts of Hadrian and others—to the effect that the position of the witnesses and their motive to misrepresent should be considered by the Judge.* If not suspicious *propter personam*, i.e., on account of the infamy or low rank of the witness, or *propter causam*, on account of gain or enmity, the evidence ought to be received. The Judge was not to lay down any hard and fast rule, but deal with every case on its merits. A provincial Judge was to regard the custom of his province. Many of the cases on sufficiency, like those on relevancy, were decided on the point of the freedom or not of a particular person, whether in a *liberalis causa* or in an *interdictum de libero homine exhibendo*. For instance, in order to prove the freedom of a family of brothers, more was required than evidence of the freedom of one,† nor was evidence of a contract of hiring in itself sufficient to prove freedom.‡ It was not enough to prove that the father of the person whose freedom was in question had attained a place in the civil service (*civiles honores*), for he might have done so illicitly.§ The rules as to *onus probandi* or *onus probationis* (the latter seems the classical term),|| are in consonance with those generally accepted in modern practice. The cardinal rule as laid down by Paulus is *Ei incumbit probatio qui dicit non qui negat*.¶ The *onus* was on the party who would fail in the absence of evidence on either side. Accordingly the plaintiff had to prove his case, the defendant his *exceptio*,** though if the plaintiff sued on a *cautio* and the defendant pleaded *exceptio doli* or *non numerata pecuniæ*, the plaintiff had to prove not only the execution of the *cautio*, but also

* Dig. xxii., 5, 3.

† Cod. vii., 16 17.

‡ Id., 18.

§ Cod. vii., 16, 11.

|| Dig. xxii., 3, 25, 3.

¶ Dig. xxii., 3, 2. A similar principle occurs in Cod. ii., 1, 4, and in the maxim *actori incumbit rei probatio*.

** Dig. xxii., 3, 19, *pr. Reus in exceptione actor est*, Dig. xlv., 11, whence the rule of the commentators, *Reus excipiendo fit actor*.

payment of the money.* If a party claimed to be a minor† or alleged a secret trust‡ or the existence of fraud,§ he had to prove it, as it was not incumbent on the plaintiff to prove the negative of it in the first instance. A change of intention must be proved.|| A *heres* must establish his right to the *quarta Falcidia*.¶ A possessor, protected by his *beatitudo possessionis*, was under no obligation to prove anything,** unless where the *possessio* was of a man claiming to be free,†† or was *quasi-possessio* of a servitude. According to some authorities, the defendant, in an *actio negatoria*, must prove his servitude, even though he was in *quasi-possessio* of it.‡‡ The general rule as to *possessio* was in accordance with the well-known maxim, *In pari causâ possessor potior haberi debet*.§§ A remarkable case of *onus* occurred in the appointment of a *tutor* by an inferior magistrate. If a question arose as to the solvency of the sureties offered by the *tutor*, it was for the magistrate to shew that they were solvent, not for the *pupillus* to shew that they were insolvent.|||| Where freedom was in question the *onus* varied as the person claimed was in enjoyment or not of liberty at the time of the trial.¶¶

Written Evidence.

The generic word for written or documentary evidence was *instrumentum* or *instrumenta*, *actum* or *acta*. The titles of the *Corpus Juris* bearing on the matter are entitled

* *Cod. iv.*, 30, 3.

† *Dig. xxii.*, 3, 3.

‡ *Dig. xxii.*, 3, 22.

§ *Cod. iv.*, 19, 2; *iii.*, 31, 11.

|| *Dig. viii.*, 5, 6, 1. The text of *Dig. viii.*, 5, 8, 3, however, goes to shew that the plaintiff in such an action must prove his case, although he had the difficulty of proving a negative.

¶ *Dig. l.*, 17, 128.

||| *Dig. xxvii.*, 8, 1, 13.

† *Cod. iv.*, 19, 9.

§ *Dig. xxii.*, 3, 6.

¶ *Id.*, 7.

‡‡ *Dig. xxii.*, 3, 20.

¶¶ *Dig. xxii.*, 3, 14.

De Fide Instrumentorum.* *Instrumentum*† is limited in some cases by the addition of a specific adjective, such as *dotale*. Such instruments were either public (*publica*, sometimes *monumenta*) or private (*privata*, *domestica*, or *idiochira*), and were either witnessed or not. Examples of documents to which attestation was necessary were wills,‡ instruments of *depositum* and *mutuum*, and letters of manumission. In some cases the authority or signature of a notary or magistrate was necessary even for a document *primâ facie* private in its nature, thus making it quasi-public.§ Thus one of the modes of admitting an *emphyteuta* was in the presence of a notary or magistrate.|| In post-Justinian law a will was often sealed by a magistrate.¶ The texts do not define a public document. Apparently the intervention of a public officer might make any private document at least quasi-public, and so falling within the rules of proof applying to public documents. The same effect was sometimes attained by sufficient attestation, such as the *chirographon*** and *idiochiron* with three witnesses.†† A notary must have had knowledge of the contents of the document witnessed by him,‡‡ and the protocol with the name of the *comes sacrarum largitionum*, and the date must have been left as a part of the instrument.§§ It is sometimes doubtful whether a particular text applies to both private

* *Dig.* xxii., 4; *Cod.* iv., 21; *Nov.* lxxiii.

† *Instrumentum* applies nominally to *ea omnia quibus causa instrui potest*, *Dig.* xxii., 4, 1, *i.e.*, oral as well as written testimony, but in practice the texts generally confine it to the latter. In *Cod.* ii., 4, 29, *species* is used as the equivalent of *instrumenta*. Other terms used are *scriptura*, *chartula*, *ratio*, *documentum*, *monumentum*, &c.

‡ Witnesses to wills were, according to Festus, called *classici testes*.

§ *Quasi publice scriptum*, *Cod.* viii., 18, 11.

|| *Cod.* iv., 66, 3.

¶ *Leon. Const.* xliv.

** *Cod.* iv., 21, 20.

†† *Cod.* viii., 18, 11.

‡‡ *Nov.* xliv., 1, *pr.*

§§ *Nov.* xliv., 2. The protocol was the first sheet of a papyrus roll, generally cut away until this enactment enforced its retention.

and public documents. Acts of State, such as constitutions and orders of the Emperor (whether *subscriptiones*, *pragmatica*, *mandata*, *epistolæ*, *rescripta*, *commonitoria*, *diplomata*, or other forms), and decisions of Judges were the main examples of *ipso jure* public documents, and they were required to be executed in a particular manner. The names of the Emperor and of the Consuls, and the month and day of the Indiction were to be prefixed to all judicial documents.* Imperial commands (*divinæ jussiones*) were to be subscribed by the *quæstor*.† They were not to be produced in the middle of an action as decisive, but the case was to be determined on legal principles.‡ Both public and private written contracts were by a supplement (*amplissimus ordo*) to the *Lex Cornelia de Falsis* to be signed on wax laid on the folded instrument in a particular way, so as to avoid the risk of the document being tampered with.§ A *transactio* could not be set aside, if entered into *bonâ fide*, simply by the discovery of new documentary evidence.|| Where there was an appeal pending, all documents were by a constitution of Valentinian and Valens in 364 to be forwarded to the Court of Appeal within a limited time.¶ This would at a later period have included the judgment of the lower Court, which by a constitution of Leo the Philosopher must have been in writing.** The main distinctions between public and private documents were these: (1.) A public document was preferred to oral evidence.†† A private document was equivalent to oral evidence.‡‡ Its only advantage was the greater facility of proof.§§ (2.) A public

* *Nov.* xlvii.† *Nov.* cxiv.‡ *Nov.* cxliii.§ *Paulus, Sent.*, v., 25, 6.|| *Cod.*, ii, 4, 19, and 29.¶ *Cod.* vii., 62, 24.** *Leon. Const.* xlv.†† *Dig.* xxii., 3, 10.‡‡ *Eandem vim obtinent tam fides instrumentorum quam depositiones testium*, *Cod.* iv., 21, 15.§§ *Dig.* xxii., 4, 4.

document proved itself,* like the probative writing of Scots law or an Act of Parliament in England. A private document did not in general suffice without further proof, it was only *primâ facie* evidence.† For instance, a document executed by a creditor, even the *fiscus*, was not of itself sufficient to charge a debtor.‡ On the other hand, oral evidence was not of itself sufficient to prove freedom.§ A private writing (*scriptura*) naming the estate to which a *colonus* belonged was not sufficient to establish title to him without further proof, such as his enrolment on the *census*.|| Nor was the declaration of a man that he wished to become a *colonus* valid without subsequent reduction to writing.¶ Letters by the father to the mother acknowledging an illegitimate child were raised to be *instrumenta* of proof by Antoninus and Verus.**

The principal examples of private documents†† were the *cautio*‡‡ (sometimes called *securitas*), *chirographon*, *sygraphæ*, *apocha*, *antapocha*, and written *stipulatio*, most of them being written acknowledgments of debts due or receipts for debts paid.§§ The *chirographon* and *sygraphæ* were the representatives of the primitive *nomina*, or debts

* Nov. xlix., 2.

† Cod. iv., 19, 5. Cf. *non figura litterarum sed oratione quam expriment litteræ obligamur*, Dig. xlvii., 7, 38.

‡ Cod. iv., 9, 7.

§ Cod. iv., 20, 2.

|| Cod. xi., 47, 22, *pr.*

¶ *Ib.*

** Dig. xxii. 3, 29.

†† Some of these words, especially *chirographon*, occur in early English law. Thus the *chirographarii* were officers of the Exchequer who preserved *chirographa* entered into between Christians and Jews, Madox, *Hist. of Exch.* i., 221.

‡‡ *Cautio* in this sense is analogous to, but by no means synonymous with its use as meaning a judicial security, as in *cautio de dolo*, *damni infecti*, *de persequendo servo*, *de amplius non turbando*, *usufructuaria*, *moratoria*, &c. In rare instances it means an agreement in general, as in *privatorum cautione legibus non esse refragandum*, Dig. xxxv., 2, 15, 1.

§§ See the works of Brunner (1880) and Erman (1883) on Roman acquittances.

proved by an entry in the *codex*, or ledger of the creditor.* The debt could be assigned by means of *expensilatio* or *nomina transcriptitia*.† There was a doubt whether aliens could be bound by *nomina transcriptitia*,‡ and the *chirographon* and *syngraphæ* were no doubt permitted by the prætor in order to protect contracts by aliens. In the end they superseded *nomina*, even between citizens, and in the time of Justinian the literal contract of the *jus civile* had ceased to exist.§ The *chirographon* (or *chirographum*) || had attained a legal sense in Cicero's time.¶ It was an acknowledgment of debt signed only by the debtor and kept by the creditor. It might be the subject of a *legatum*.** *Syngraphæ* (in the time of Gaius peculiar to aliens)†† differed from the *chirographon* in being two documents, an original and a counterpart,‡‡ signed by debtor and creditor, and a copy kept by each. If not so signed, the document was only an *autographon*. There was also the difference, according to the Pseudo-Asconius, that *chirographa* were only valid as far as they recorded the truth, but *syngraphæ* might be valid as evidence of an agreement even contrary to the truth. §§

The action on both *chirographon* and *syngraphæ* was a *condictio*. Where the money had not really been paid over,

An allusion to this form of creating evidence of a debt is made by Horace, *Sat.* ii., 3, 69:

*Scribe decem a Nerio ; non est satis, adde Cicuta
Nodosi tabulas centum, mille adde catenas.*

† Gaius, iii., 28.

‡ *Id.*, 133.

§ *Inst.* iii., 21, *pr.*

|| *Chirographa* seem to have been written on wooden tablets in Juvenal's time. *Vana supervacui dicunt chirographa ligni*, xiii., 137.

¶ Which apparently *syngraphæ* had not done. Long on Cic., *Verres*, ii., 1, 36.

** *Dig.* xxxii., 59.

†† iii., 134.

‡‡ The counterpart alone seems to have been called *antisyngraphæ*, Just. *Edicta*, ix., 2.

§§ Pseudo-Asconius in Bruns, § 91.

and a *chirographon* or *syngraphæ* were produced as evidence of the debt, an *exceptio non numeratæ pecuniæ* could be pleaded by the debtor. It was equivalent to an *exceptio doli*,* and must have been brought within two years.† The *chirographon* was only evidence of the debt, mere entry in a *chirographon* of a sum as due did not of itself constitute an *obligatio*.‡ The debtor could bring a *condictio* to recover the instrument if withheld from him.§ A *syngrapha* by which a woman bound herself to lead an immoral life was void.|| If the debtor liable on a *syngrapha* denied his liability, he could be made to pay double the amount of the loan.¶ The *cautio*, although, perhaps, originally only a development of the *chirographon*,** appears to be used later as the most general term for any kind of private instrument, including even a will.†† It may also be used for a simple promise,‡‡ for a *stipulatio*, especially in the form known as the *Muciana cautio*,§§ or for a receipt.¶¶ A form of a *cautio* in its more technical meaning of a written security for a debt, taken from the *Quæstiones* of Paulus, is given in the Digest.¶¶ It there bears the appearance of a bond, the obligor binding himself to repay a loan by instalments, with a penalty of a *denarius* a month for every hundred *denarii* unpaid at maturity. *Apocha* was a receipt for a debt, whether

* *Cod.* iv., 30, 3.† *Inst.* iii., 21, *pr.*‡ *Dig.* xxii., 3, 31.§ *Cod.* iv., 30, 7.|| *Nov.* xiv., 1.¶¶ *Nov.* xviii., 8. Note the use (very rare) of *Syngrapha* in the singular number. In such a case as the above the oath must be tendered to the defendant as soon as possible, or the plaintiff would be liable for all costs occasioned by the delay. The penalty of double damages is expressly said to be imposed on the analogy of the *Lex Aquilia*.** Cicero combines the two terms, *Græculam tibi misi cautionem chirographi mei*, *ad Fam.*, vii., 18.†† *Dig.* xxvi., 7, 5, 7.‡‡ *Cod.* vi., 38, 3 (where its Greek equivalent appears as ἀσφάλεια).§§ *Dig.* xxxv., 1.||| *Dig.* xxii., 3, 15.¶¶ *Dig.* xii., 1, 40.

public, as a tax,* or private, as rent.† It was more conclusive than the simple restoration of a *chirographon*,‡ but less so than an *acceptilatio*, for the latter was an absolute discharge, the *apocha* only if the money had been paid.§ A mere *pactum* that no further controversy should be raised on a contract did not bar the party from subsequent action.|| *Antapocha* was a writing by which the debtor shewed that he had paid the debt.¶ The written *stipulatio* was a means of shewing that an oral *stipulatio* had been duly made, and this whatever were the subject-matter of the contract; it applied, for instance, to *fidejussio*** and to a marriage settlement.†† On the same principle a document might be evidence of *traditio*.‡‡ The written record of a *stipulatio* carried with it a presumption that the question of the *stipulatio* had been properly asked and answered,§§ and that if a slave were named as having made a *stipulatio* he had been present and was the slave of the master named in the instrument.||| Where the instrument contained such words as *rogavit Titius, spopondit Mævius*, an action *ex stipulatu* lay, unless there were evidence that the parties intended the contract to be one of *pactum* and not of *stipulatio*.¶¶ Error in transcribing the *stipulatio* did not make it void.***

The question whether oral or written evidence preponderated when in opposition to one another is one not easy to answer. The rule *Contra scriptum testimonium non*

* *Cod.* iv., 66, 2; *Nov.* vii., 3, 2.

† *Cod.* viii., 43, 6; *Cod.* iv., 66, 2 (receipt for rent due by an *emphyteuta*).

A slave for whom his vendor had an *apocha* was called *apochatus*.

‡ *Cod.* viii., 43, 14. The *apocha trium annorum* is still a technical term of Scotch law.

§ *Dig.* xlv., 4, 19.

¶ *Cod.* iv., 21, 19.

†† *Dig.* xlv., 1, 134.

§§ *Cod.* viii., 38, 1.

¶¶ *Dig.* ii., 14, 7, 12.

|| *Dig.* xii., 6, 67, 3.

** *Dig.* xlv., 1, 30.

‡‡ *Cod.* iv., 38, 12; vii., 32, 2.

||| *Cod.* viii., 38, 14.

*** *Dig.* i., 17, 92.

*scriptum testimonium haud profertur** seems express, and is supported by other texts.† On the other hand, *Eandem vim obtinent tam fides instrumentorum quam depositiones testium* seems to imply their equality.‡ And the terms of several of the constitutions in *Cod. iv.*, 22 (*In contractibus rei veritas potius quam scriptura perspici debet; § non quod scriptum sed quod gestum est inspicitur; || plus actum quam scriptum valet*¶), appear to imply that (at any rate in contract) oral evidence might always be adduced in opposition to a written document.** The texts can probably be reconciled only by reading the terms of *Cod. iv.*, 20, 1, as the general rule applying to public and private documents, subject to a few exceptions. One exception seems to be the case of the *chirographon* and *syngraphæ* mentioned above. Apparently a *pactio* contained in *syngraphæ* could not be contradicted, even though it did not express the truth. Another exception was the case of a master naming his slave as his son in a public document. *In favorem libertatis* such a statement could not be contradicted.†† In some cases proof could be made by either documentary or oral evidence. This was the case with *dos*, which could be claimed either on the evidence of a *stipulatio* or *pactum*, or on that of a *dotale instrumentum*.‡‡ In a *vindicatio* any *indicia* not rejected by the law were as good evidence as *instrumenta*.§§

* *Cod. iv.*, 20, 1.

† Such as *Dig. xxii.*, 3, 25, 4; *Cod. iv.*, 30, 13. The general sense of the latter text is that a party was estopped by his own writing unless he could prove by the clearest evidence that some addition or omission had been made in it fraudulently.

‡ *Cod. iv.*, 21, 15.

§ *Cod. iv.*, 22, 1.

|| *Id.*, 3.

¶ *Id.*, 4.

** In *Dig. xxii.*, 5, 3, 4, the reference is only to the written deposition of a living witness who might have been produced.

†† *Cod. vii.*, 6, 10.

‡‡ *Nov. cxvii.*, 4.

§§ *Cod. iii.*, 32, 19.

It should be noticed that few private transactions were required by Roman Law to be in writing. They were put into writing only for convenience of proof. Wills must (with certain exceptions) have been in writing. Among other documents which the law required may be mentioned gifts *inter vivos* of more than 500 *solidi* (except to or from the Emperor),* contracts with *argentarii*†, *libelli appellationis*,‡ *editiones actionis* (with certain exceptions),§ and marriage settlements made by *illustres*, which must have been made by *dotalia instrumenta*.|| Such instruments were usual, but not necessary, in the case of other marriages.

Where an original document (*originale, authenticum*) existed and was capable of being proved, a copy (*index, exemplum, exemplar, exemplarium*),¶ was not as a rule admissible, even where the *fiscus* was a suitor.** Where a will was made in duplicate (*exemplarii causâ*) either part appears to have been regarded as an original.†† Where an original document had been lost, secondary evidence of its contents was admissible, whether oral or by other *evidentes probationes*.‡‡ Thus payment of taxes could be proved on destruction of the original receipts by inspection of the books of the *fiscus*.§§ The contents of a lost will could be proved by oral evidence.||| But the contents of an existing but illegible will could not be so proved.¶¶ The enjoyment of property as the result of a contract was sufficient evidence that the contract had been duly made.*** The same was the case with *possessio*, division, and emancipation.†††

* See below.

† Just. *Edicta*, ix.

‡ *Dig.* xlix., i, 1, 4.

§ *Dig.* ii., 13.

|| *Nov.* cxvii., 4.

¶ These are the terms used in the *Corpus Juris*; Pliny, xxxv., 11, 40, also uses *apographon*.

** *Dig.* xxii., 4, 2.

†† *Dig.* xxxi., 47.

‡‡ *Cod.* iv., 21, 1 and 7.

§§ *Cod.* iv., 21, 4.

||| *Cod.* iv., 1, 13.

¶¶ *Dig.* xxviii., 4, 1, *pr.*

*** *Ib.*, 10.

††† *Ib.*, 8, 9, and 11.

Parol Evidence to explain Writing.

The strict English rules as to the admission of parol evidence to explain a contract or other writing were, as has been already said, unknown in Roman Law. They were not required, and therefore were not formulated. The principal instances of the admission of explanatory parol evidence were to explain the intention of a testator in the case of doubt as to a pecuniary *legatum* by his habits (*consuetudo*) or his domicile (*regio*),* and of a party to a *stipulatio* by the rule existing where the *stipulatio* was made.† A case similar to a class which has given much trouble to English Judges was this. A testator had two slaves, Flaccus, a fuller, and Philonicus, a baker. If he leave Flaccus, the baker, to his wife, what happens? According to Javolenus the first thing to be considered is the intention of the testator; if that be not clear (presumably by intrinsic evidence), evidence should be given as to knowledge by the testator of the names of the slaves; if he knew their names, Flaccus was to pass by the gift, the error being in the trade; if the names were unknown to him, the baker would be the one bequeathed.‡ The questions arising in this case belong perhaps more properly to the law of interpretation than to the law of evidence. So do the few general rules to be found on the subject, such as the rule that words were not to stand against an obvious intention,§ but where there was no ambiguity, the question of intention was not to be raised.|| The rule that a *legatum* was not to be lost by false description¶ obviously implies that it must appear by evidence that the description was false.

* *Dig.* xxx., 50, 3; xxxii., 75.

† *Dig.* i., 17, 34. The rule applied to a *dupla stipulatio* on the sale of immovable property, *Dig.* xxi., 2, 6.

‡ *Dig.* xxxiv., 5, 28.

§ *Dig.* xxxii., 69; *Cod.* vi., 43, 2.

|| *Dig.* xxxii., 25, 1.

¶ *Falsa demonstratione legatum non perimi*, *Inst.* 2, 20, 30.

Production of Documents, &c.

As a general rule a party, whether in a civil or criminal case, could not be forced to produce (*edere, exhibere*) documents for the inspection of his adversary.* To this certain exceptions were admitted. In an action for a debt the debtor had a right to inspect the creditor's books,† but the creditor could not inspect the debtor's.‡ Bankers and money-lenders (*argentarii*) and their managers were bound to produce their accounts (*rationes*),§ but apparently only after the party calling for them had taken the oath of calumny.|| Inspection of a will in a testamentary suit could be enforced by *interdictum de tabulis exhibendis*.¶ Apart from the *interdictum* the judge could call for and inspect the will.** In non-testamentary causes this right seems to have been confined to *acta publica*, whether civil or criminal.†† But the will was no doubt regarded as a quasi-public instrument, so that the inspection of it was scarcely an exception to the rule. Documents recited in a document produced must themselves be produced.‡‡ A witness could not be forced to produce a document if he swore that the production would injure him, or that he had never had such a document in his possession, or that he had lost it.§§

Comparison of handwriting was the subject of a considerable amount of legislation. The comparison might be made with a document produced at the trial or with one

* *Quum neque juris neque æquitatis ratio permittat, ut alienorum instrumentorum inspiciendorum potestas fieri debeat*, *Cod.* ii., 1, 4.

† *Id.*, 5.

‡ *Id.*, 8.

§ *Argentariæ mensæ exercitores rationem quæ ad se pertinet edant adjecto die et consule*, *Dig.* ii., 13, 4, *pr.* This was part of the Edict, and the Title in which it occurs is a mass of interpretation of the words.

|| *Dig.* ii., 13, 9, 3.

¶ *Dig.* xxix., 3, 2, 8; xliii., 5; *Cod.* viii., 7.

** *Dig.* ii., 15, 6.

†† *Cod.* ii., 1, 2.

‡‡ *Nov.* cxix., 3.

§§ *Cod.* iv., 21, 22.

not produced. Documents produced, whether public or private, could be used for the purpose of comparison.* A document not produced could be called for by the Judge, but could be used for the purpose of comparison only if it were proved by three witnesses to be in the handwriting of the person whose signature was in doubt, or if it had been made in presence of a notary.† The experts who gave evidence as to the handwriting were bound to take an oath that their opinion was not given for the sake of gain, enmity, or favour.‡ If the disputed signature were to a contract for the amount of more than a pound of gold, and made in the city, some additional evidence besides mere comparison must have been adduced.§ This is in accordance with the general rule that in comparison of handwriting the Judges were not to be rash in trusting the evidence of their own observation or of experts.|| If the Court came to the conclusion that in spite of his denial a defendant had signed a document, he was liable to a penalty of twenty-four *aurei* and to disability to plead the *exceptio non numeratæ pecuniæ*.¶

Forgery, uttering, concealment, destruction, or falsification of documents of whatever kind was punishable by the *Lex Cornelia de Falsis*, the verbiage of which, as it stands in Paulus,** reminds the reader of certain English Acts of Parliament. The punishment, as in most other offences, varied with the rank of the criminal.†† A distinction was drawn between forgery and falsification, the former consisted in imitation, the latter in insertion of a false statement.‡‡ Where judgment had been given on the faith of a forged or falsified instrument it was null

* *Nov.* xlix., 2.

† *Cod.* iv., 21, 20.

‡ *Ib.*

§ *Nov.* lxxiii., 8.

|| *Id.*, 6.

¶ *Cod.* iv., 21, 16.

** *Sent.*, v., 25.

†† *Dig.* xlviii., 10 and 19.

‡‡ *Dig.* xlviii., 10, 23. Such insertion in a public document was *majestas* under the provisions of the *Lex Julia*, *Dig.* xlviii., 4, 2.

and void, the cause must be heard again *de integro*,* and execution on the judgment was suspended.† A forged signature to an instrument of contract of sale or hiring made the instrument void on the ground that there was an absence of *consensus*, the basis of a consensual contract.‡ Theft of a *cantio*, *apocha*, &c., was theft of the sum for which the instrument was a security or receipt.§ If the document were not stolen but only damaged, an *actio Legis Aquiliæ* was the proper remedy.||

JAMES WILLIAMS.

IV.—THE DECLINE OF ENTAIL LAW IN SCOTLAND.

DURING recent Parliamentary Elections, one of the items in the programme of some of the more advanced candidates in Scotland has been “the complete abolition of Entails.” This is not a reform of a very revolutionary nature, nor one that would greatly affect the ownership of land, but while Entails still continue things of the present, it may be interesting to note briefly the causes leading up to their origin, and then to trace the inconveniences which they were found to occasion, with the successive Legislative enactments to remedy the same, which have now deprived Entail Law in Scotland of almost all its influence.

And first with regard to the meaning of an Entail, or to use the old Scotch word “tailzie,” the word being derived from the French “tailler,” to cut. “An entail,” says Mr. Bell, in his work on *Conveyancing*, “is a deed of conveyance of land, limiting the right of succession to a

* Paulus, *Sent.*, v., 5, 10; *Cod.* vii., 58, 2.

† *Id.*, 4.

‡ *Cod.* iv., 22, 5. § *Dig.* xlvii., 2, 27.

|| *Dig.* xlvii., 2, 27, 3.

“particular series of heirs, and restraining these heirs from alienating or burdening the estate, or from altering the prescribed order of succession.” “Entails were intended,” says the same writer, “for the preservation and aggrandisement of a great feudal aristocracy and were perhaps a natural adjunct of the feudal system.”

It was the Feudal aristocracy who got the Act of 1685 passed, to which Act Scottish Entails practically owe their existence, being, in the words of one of the Scotch Judges, “the mere creatures of that statute.” The question whether the power of entailing did not exist at Common Law had before that date been discussed, but on account of the great doubt felt, this statute was passed to put Entails on a definite footing, and it was soon settled that there was no such power at Common Law, and that deeds of entail could only be validly constituted in accordance with the provisions of that Act. By this statute, a proprietor of land was enabled, by executing a deed of entail, to leave his estate to a certain series of heirs, who were prohibited from (1) alienating the estate, (2) contracting debt so as to affect the estate, (3) altering the order of succession, the cardinal prohibitions, as they were called. The Entail could not be brought to a close till all the heirs called under it had died, and Entails were guarded by irritant and resolute clauses contained in the Deed. By the former, prohibited Acts were rendered null and void; by the latter, the contravener forfeited his possession.

Such an excessive power of tying up an estate throughout future generations was soon found to lead to very great inconveniences and abuses.

Sir Thomas Hope, who had devised the irritant and resolute clauses, speaks of these very clauses as being “odious in tailzies.” Stair, the great Institutional writer, speaking of the clauses against alienating the estate and contracting debt, says that they are “most unfavourable

"and inconvenient, especially when absolute; for *first*, "commerce is thereby hindered, which is the common "interest of all mankind; *secondly*, the natural obligations "of providing for wives and children are thereby hindered, "which cannot lawfully be omitted; *thirdly*, it is unreason- "able so to clog estates descending from predecessors, and "not to leave our successors in the same freedom that our "predecessors left us."

The result of this feeling has been that Entails have always received the strictest possible construction. In the case of an ordinary Testamentary deed, the Court endeavours to find out and give effect to the intention of the Testator; but with regard to an Entail, though the intention of the maker of the deed may be quite evident, unless the words themselves sufficiently bear that meaning, no weight is given to it. Lord Campbell lays it down that "if an expression in an entail admits of two meanings, both "equally technical, grammatical, and intelligible, that "construction must be adopted which destroys the entail, "rather than that which supports it." A good illustration of this strict mode of construction was given in the case of *The Earl of Breadalbane v. Jamieson*. An heir of entail in possession who had pulled down part of the Mansion House, in order to rebuild it on a larger scale, died before the new house was habitable. An action was raised by the next heir against the Executors of the deceased heir to force them to complete the house, or at least make it as good as it had been before. In this action, the Executors were assolizied, a majority of the Judges holding that the heir in possession had not exceeded his proprietary rights, as the substitute heirs had no control over the heir in possession, in his exercise of such rights, except in so far as was provided in the Entail—the only proceedings competent to substitute heirs against the heir in possession being Declarator of contravention and Interdict.

Towards the close of the last century, the series of Legislative enactments began which have now so greatly diminished the force and effect of Entails. We may consider these enactments under three heads, which, to a certain extent, correspond to the three classes of objections taken by Stair to Entails, viz.: (1) Those enabling the heir of entail in possession to burden the estate with debt; (2) Those enabling him to grant provisions to wife and children; (3) Those enabling him to disentail.

(1.) *Burdening the Estate with Debt.*

The "Montgomery" Act, passed in 1770, allowed heirs of entail in possession, who had expended money on certain specified improvements on the estate, to be creditors of succeeding heirs to the extent of three-fourths of their outlay, and this might be charged on the estate to the extent of four years' rent.

By the "Rutherfurd" Act, 1848, which gave power to disentail, heirs of entail entitled to disentail, were given power to sell, alienate, dispoise, charge with debt and encumbrances, lease and feu entailed estates, in whole or in part, with the same consents as are required for a disentail; and, with the authority of the Court, to execute all necessary deeds.

It was also provided by this Act, that heirs of entail, when the entail was dated prior to 1st August, 1848 (*i.e.*, as afterwards explained, an old entail), who in future should expend money in improvements on their estates, might grant bonds of annual rent, and also charge the estates, to a certain extent, by granting a Bond and Disposition in Security.

By the Entail Amendment Act, 1868, debts of entailers or other debts for which adjudication might be got against the estate, were allowed to be charged on it by Bond and Disposition in Security.

By an Act passed in 1875 the Court was empowered to authorise an heir of entail in possession under an old entail, to borrow money, under certain circumstances, to defray the cost of improvements executed or intended to be executed by him, and to grant bonds therefor over the estate.

By an Act passed in 1878, obligations to tenants for improvements undertaken by an heir of entail devolved, on his death, on the next heir of entail, to the relief of his personal representatives ; and borrowing powers were still further extended by an Act passed in 1882.

(2.) *Granting Provisions.*

At Common Law there exists in Scotland a right to certain life-rents in the surviving spouses of heirs and heiresses, and these apply in the case of heirs of entail, unless otherwise provided in the deed, but there are no Common Law rights in the younger children. It is allowable, however, to give in the Deed itself express relaxations empowering the heir to grant such provisions to children, and to grant additional provisions to husband and wife. But the most important powers are those conferred by a Statute passed in 1824, called the "Aberdeen" Act.

Under this Act provisions might be granted by heirs or heiresses of entail to the extent of one-third of the free rent for a wife, one-half for a husband. Provisions to children were also authorised, to the following extent: in the case of there being one child only, to the extent of one year's free rent ; of two, to the extent of two years' free rent ; of three or more, to the extent of three years' free rent ; such allowances, however, not to affect the fee, but only the heir in possession. By the "Rutherford" Act, and an Act passed in 1853, it was allowed to make provisions to children, charging them against the fee, by Bond and Disposition in Security, and by the Act of 1868, heirs-apparent

were empowered, with consent of the heirs in possession, to make the same provisions as the latter were authorised to make under the "Aberdeen" Act.

(3.) *Disentailing.*

The "Rutherfurd" Act first gave the power to disentail, and with regard to this power it divided Entails into two classes, old and new, the old being those dated before, and the new those on or after, 1st August, 1848. In regard to new Entails this Act provided that an heir of entail in possession, born after the date of the Entail, might disentail the estate and acquire it in fee simple, under authority of the Court; in the case of his having been born before the date of the Entail, it was necessary to have the consent of the next heir in succession, he being the heir-apparent.

In like manner, in the case of old Entails, the Act provided that an heir in possession born after 1st August, 1848, might disentail under an authority from the Court, and that an heir born before that date might disentail with consent of the next heir, he being the heir-apparent and born after 1st August, 1848. The Act also provided that *any* heir in possession under an old Entail might disentail with certain specified consents of succeeding heirs. It also made certain conditions, such as creditors opposing, which were to prevent the disentail being carried through.

Accordingly, the effect of this Act was to give the heir in possession, in most cases, power to disentail with certain consents, but only in the event of new entails, and of his having been born after the date of the Entail, could he effect a disentail without obtaining consents.

By the Entail Amendment Act, 1875, a change was made in this, and in the case of old Entails, when any of the succeeding heirs refused consent (excepting, however, the nearest heir, whose consent had still to be obtained), the

Court could order their expectancies to be valued, and, on payment of the same being made, or security being given for it, the consents might be dispensed with.

By the Act of 1882, heirs under new Entails were allowed to disentail with the same consents or payment of expectancies as heirs under old Entails. By this Act, two other important provisions were introduced :—

1st. The consent of the nearest heir might be valued and dispensed with in the same manner as that of the other heirs might by the “ Rutherford ” Act.

2nd. A creditor of an heir in possession, in respect of any debt incurred after the passing of this Act, might, when the heir was in a position to disentail, but refused to do so, apply to the Court, and, under certain conditions, force a disentail of his debtor's lands.

Thus we see how the Legislation of the last half of this century has defeated almost all the objects which Entails were intended to accomplish, and has removed almost all the inconveniences to which they were found to give rise.

After such a formidable array of hostile statutes, it is surprising that even within recent years new Entails have been created, but it must be kept in mind that while in all cases an heir in possession *can* disentail, in certain cases the value of the expectancies of succeeding heirs may be so high as practically to prohibit it.

Judging, however, from recent Legislation and popular feeling on the subject, the Act which will finally put an end to the entailing of land in Scotland seems likely to rise above the Legal horizon at no very distant date.

LAWRENCE M'LAREN.

V.—FOREIGN MARITIME LAWS: V. PORTUGAL.

TITLE III.

Abandonment.

ART. 616. Property which is insured may be abandoned in the following cases :—

- (1.) Capture.
- (2.) Embargo by order of a Foreign Power.
- (3.) Embargo by order of the Government after the voyage has begun.
- (4.) Total loss of the insured property.
- (5.) Such other cases as may be agreed on by the parties.

§1. A ship which cannot be repaired is equivalent to a ship totally lost.

B. 199, F. 369, G. 865, H. 663, 666, I. 632, R. 563, S. 773, 787, 789, Sc. 6, 256, 257. E. 211.

617. The assured may abandon to the insurer without being obliged to prove the loss of the ship, when, reckoning from the day on which the ship sailed or from the day on which the last news was received, there have been no news of her for the following terms : Six months, if her voyage was to an European Port ; One year, if to a more distant place.

§1. If the insurance is for a fixed period, after the terms prescribed in this Article have elapsed, the loss of the ship is presumed to have occurred within the insured time.

§2. If there are several successive insurances, the loss is presumed to have occurred on the day following that to which the last news refers.

§3. Nevertheless, if it is subsequently proved that the loss in fact occurred at a time not covered by the policy, the insurance must be repaid with legal interest.

B. 207, 208, F. 375, 376, G. 835, 866-868, H. 667, 674, I. 633, R. 563, S. 798, 799, Sc. 258. E. 215.

618. When a ship is deemed to be a total loss, goods which are insured and loaded on board her may be abandoned, if within three months next after the event no other ship can be obtained to re-load them and carry them to their destination.

§1. If, in the case for which provision is made in this Article, the insured goods are forwarded in another ship, the insurer is liable for damages they may sustain, expenses of loading and re-loading, warehouse rent, and watching, increase of freight and salvage up to the amount of the sum insured and so far as this sum is not exhausted will continue to bear the risks of the voyage.

B. 223-227, F. 390-394, S. 634, 820, 822-823, 824 (5), 831, 838-852, H. 478, 628, 632, 673, I. 634, 635, R. 584, S. 792-794. E. 228-231.

619. An abandonment of property insured when captured or placed under embargo can only be made after the lapse of three months from receipt of the news of the capture or embargo, if it takes place in European seas, and of six months, if it takes place elsewhere.

§1. If the goods are of a nature to suffer rapid deterioration, the terms prescribed in this Article will be reduced by one-half.

B. 220, F. 387, G. 865, 868, H. 663, 665, 668, 673, I. 636, S. 795, Sc. 259. E. 225.

620. Notice of abandonment must be given to insurers within three months, reckoning from the day on which knowledge of the disaster is obtained, if it happens in European seas; within six months, if in African seas, or those West and South of Asia and East of America; and within a year, if elsewhere.

§1. In cases of capture or embargo by order of a Government, these terms only begin to run from the termination of those prescribed in the preceding Article.

- §2. When the terms prescribed by this Article have expired, the assured will not be allowed to abandon, but preserves his right of action for Average losses.

B. 203, 220, F. 373, 387, G. 865, 868, 869, H. 663, 665, 667, 668, 671, I. 637, S. 804, Sc. 260. E. 213, 225.

621. The assured, on communicating to the insurer news that he has received, may abandon and give notice to the insurer to pay the amount insured within the time fixed by the policy or by law, or may reserve his right to abandon during the legal periods.

- §1. When he abandons, he must declare all insurances made or ordered, and sums borrowed on bottomry, so far as he is aware of them, on goods that are laden on board; if he fails to do this, the time for payment will be suspended until the day on which he makes such declaration, whilst no extension is allowed of the term prescribed by law for abandoning.

- §2. In case of a fraudulent declaration, the assured loses all benefits of the insurance.

B. 210, 211, F. 378, 379, G. 873, H. 675, I. 638, S. 800, 804, Sc. 260, 261. E. 216, 217.

622. An abandonment only includes things which are covered by the insurance and at risk, and cannot be partial or conditional.

B. 202, F. 372, G. 870, H. 677, I. 639, S. 804, Sc. 262. E. 212.

623. Things which are insured belong to the insurer from the day on which notice of abandonment is given and either accepted by the insurer or adjudged to be valid.

- §1. The assured must deliver to the insurer all documents relating to the goods insured.

B. 216, F. 385, G. 871, 872, H. 678, I. 640, R. 569, S. 803, Sc. 263. E. 223.

624. A notice of abandonment has no legal effect if the facts on which it is based are not confirmed, or did not

exist at the time at which the notice was given to the insurer.

§1. A notice of abandonment, nevertheless, is of full effect if, subsequently to it, things occur which, had they occurred previously, would have excluded the right to abandon.

B. 216, F. 385, G. 871, 872, H. 678, I. 640, R. 569, S. 803, Sc. 263. E. 223.

625. In case of capture, if the assured cannot give notice to the insurer, he may ransom the captured property without waiting for instructions from the insurer, provided, however, that in such a case he must acquaint the insurer, as soon as an opportunity offers, with the terms of the composition he has effected.

§1. The insurer has the option of taking the composition on himself or of rejecting it, and must give the assured notice of his choice within twenty-four hours of receiving the information.

§2. If he accepts the arrangement, he must, without delay, contribute his quota to the payment of the ransom in accordance with the agreed terms, and will continue to run the risks of the voyage in conformity with the terms of the policy.

§3. If he rejects the arrangement, he must pay the whole sum assured without delay, and has no claim upon any of the ransomed property.

§4. If the insurer fails to give any notice of his choice within the period prescribed, he is deemed to reject the arrangement.

§5. When the ship is ransomed, if the assured resumes possession of his property, damages sustained by it are deemed to be Average losses giving a right to compensation from the insurer, but if, in consequence of re-capture, the property passes into the hands of a third party, the assured may abandon it.

I. 641, R. 581, S. 779, 801.

TITLE IV.

Bottomry.

626. A Bottomry contract must be in writing, and must state:—

- (1.) The amount borrowed.
- (2.) The premium agreed on.
- (3.) The things on which the loan is secured.
- (4.) The name, description, tonnage, and nationality of the ship.
- (5.) The name of the Commander.
- (6.) The names and addresses of the lender and borrower.
- (7.) A particular and specific description of the risks undertaken [*riscos tomados*] (*i.e.*, a description of the voyage or voyages).
- (8.) Whether the loan is for one or more voyages or for a fixed time.
- (9.) The time and place for repayment.

§1. The deed will be dated at the time and place at which the loan is made, and must be signed by the parties contracting, who state the quality in which they execute it.

§2. A Bottomry contract which is not in writing as prescribed in this Article, becomes a simple loan, for which the borrower is personally liable for payment of principal and interest.

B. 135, 140, F. 311, G. 684, H. 570, I. 590, S. 720, 721, Sc. 177. E. 150.

627. A Bottomry bond drawn to order is negotiable by endorsement on the same conditions, and confers the same rights and actions against sureties, as a Bill of Exchange.

§1. An indorsee takes the place of an indorser, both with regard to the premium and losses, but the warranty of the solvency of the debtor is limited to the principal, and does not include the premium unless otherwise agreed.

B. 144, 162, 163, F. 313, 314, G. 685, 687, H. 573, I. 592, S. 722. E. 154.

628. A contract of Bottomry can only be made upon the whole or a portion of the cargo, or upon freight carried jointly or separately, and can only be effected by the Commander in the course of a voyage when there are no other means for prosecuting it.

B. 137, 157, F. 315, G. 681, H. 574, 575, 577, I. 593, 595, R. 381, S. 724, 725, Sc. 175. E. 155, 159.

It appears from this Article that Bottomry, strictly speaking, cannot be made on a ship at all, which must be mortgaged (Ch. VIII., Sec. II., *ante*), if money is to be raised upon it.

629. A loan on Bottomry of a sum in excess of the actual value of the things on which it is made is valid, so far as such value goes; the borrower is personally liable for the excess without maritime premium and with interest at the legal rate only.

§1. If there is fraud on the part of the borrower, the lender may demand that the contract be set aside and that he be paid the amount lent with legal interest.

§2. Anticipated profit on goods that are carried is not deemed to be an excess in value, if it is separately valued in the Bond.

B. 158, F. 316-318, H. 576, I. 594, S. 726. E. 156-158.

630. If the things on which the Bottomry loan is effected are lost by accident or circumstances beyond control, within the time and place and by the risks undertaken by the lender, the borrower is free.

§1. If the loss is partial, the payment of the loan is reduced to the value of the bottomried articles which are salvaged, without prejudice to other privileged debts.

§2. If the loan is on freight, repayment of the loan is reduced, in case of disaster, to the amount due from the charterers, without prejudice to other privileged debts.

§3. If the article that is bottomried is also insured, the value of it as salvaged will be apportioned between the principal of the bottomry loan and the amount insured.

§4. If, when the disaster happens, a portion of the bottomried goods are on shore, the loss of the lender will be limited to those on board, and he will continue to bear the risk on the goods which are safe, and which are forwarded in another ship.

§5. If all the bottomried goods are landed prior to the disaster, the borrower will pay the whole amount of the loan with the premium.

B. 164, 165, F. 325, 327, 331, G. 680, 691, H. 569, 588, I. 599, S. 719, 731, 734, 735, Sc. 174. E. 149, 165, 167, 172.

631. The lender contributes to General Average and discharges the borrower; any agreement to the contrary is a nullity.

§1. Particular Averages are not at the charge of the lender unless so agreed, but if, in consequence of a Particular Average, the bottomried goods do not suffice for the payment of sum borrowed and the premium in full, the lender will bear the loss resulting from such Average losses.

B. 166, 167, F. 330, G. 691, 725, H. 589, I. 603, S. 732, Sc. 179. E. 171.

632. If there are several Bottomry loans contracted in the course of the same voyage, the later in date is always preferred to the earlier.

§1. Bottomry loans contracted on the same voyage, and in the same port of refuge, during the same stay, are ranked together.

I. 671, 675.

633. The provisions of this Code concerning Marine Insurances and Averages apply to contracts of Bottomry when not incompatible with, and not altered by, this Title.

F. W. RAIKES.

VI.—CURRENT NOTES ON INTERNATIONAL LAW.

Public International Law.

The Behring Sea Award.

The Regulations for enforcing the recommendations of the Paris Arbitrators have been agreed upon by the two powers interested. In May, H.M.S. *Hyacinth* seized three Canadian vessels on the high seas for infraction of the new rules, but they were subsequently released unconditionally, by order of the British Commander-in-Chief on the Pacific Station. The reason for this step is not, at present, apparent.*

An interesting question would arise if vessels of foreign States, not parties to the Treaty arrangements, were to attempt sealing operations within the forbidden area.

* * *

Hawaii.

The Washington Government does not appear, as yet, to have acted upon the good resolutions embodied in the President's message. The "Provisional Government" still maintains its position at Honolulu, and has recently provided for an election of members of a "Constitutional Convention," which is to draft a new Constitution for the "Republic of Hawaii." Queen Liliuokalani has protested to the United States, but the fact that Admiral Walker has with his ship been recalled from Honolulu somewhat indicates the probability of President Cleveland's righteous indignation lapsing into a policy of mere *laissez-faire*.†

* See *Times*, May 25th, and June 6th and 7th.

† *Times*, July 2nd and 24th.

Corea.

The war between China and Japan seems likely to be prolific of International incidents. Information on the progress of events is long delayed and very unreliable when it comes to hand.

The ostensible cause of all the trouble seems, curiously enough, to lie in the provisions of a Treaty of the 18th April, 1885, by which the two combatant States conceded to each other reciprocal rights of landing troops in Corea in the event of any disturbance of a serious character arising in that country. The isolated insurgent risings, which appear to outsiders to be more or less chronic there, culminated in June last in the massing of the rebels so as to threaten the capital.* This necessitated vigorous measures by the Chinese authorities, the success of which, however, was so dubious that Japanese troops in considerable numbers were landed. Japan then demanded from the Corean Government various reforms in the Civil, Military, and Legal Administration.† China resented this interference, and proceeded on her part to pour fresh troops into the country.

Japan, while recognising China's suzerainty, "which "would retain its historical and ceremonial character," is reported to have insisted on (a) acquiescence by the Peking Government in the proposed reforms; (b) the recognition of an equal right in the Japanese Government of control and intervention in Corean matters; (c) the mutual withdrawal of troops on the restoration of order; and (d) that there should be no further importation of Chinese troops.‡

China objected to these claims as an infringement of her paramount rights as Suzerain, and serious military and naval collisions have occurred. There has been no formal declaration of war on either side, but about the 1st August

* *Times*, 6th and 12th June.

† *Ibid.*, 9th and 14th July.

‡ *Times*, 30th July.

an *ex post facto* notification was made by Japan to neutral Powers of the existence of a state of hostilities.* There had, however, already been two unfortunate incidents which an earlier notification might have avoided.

In the middle of July the British Consul-General, Mr. Gardner, and his wife, had been seized by the Japanese troops near Seoul, and though at once released with apologies, the high-handed nature of the proceedings caused a bad impression.† The sinking of a transport, the *Kow Shing*, a few days later, was a much more serious affair. This vessel, owned by a British Company, officered by British subjects, and flying the British flag, was chartered to carry Chinese troops and munitions of war to Corea. She was called upon by the Japanese man-of-war, *Naniwa*, to stop and to follow the latter to Japan. The captain pointed out to the Japanese commander that the ship was British, and that the existence of a state of war had not been intimated to Great Britain, and claimed the right at any rate to return to China. Without more ado the *Naniwa* opened fire upon her with machine guns, and sank her, with nearly every soul on board, by means of a torpedo. Accounts vary in some details, but nearly all agree so far. Several European officers were saved and apparently conveyed to Japan and imprisoned until released at the demand of the British admiral.‡

From any point of view it would appear clear that the Japanese commander committed a grave error of judgment and infraction of International comity. In the first place, the best reports support a very serious charge against the Japanese vessel of so far violating humanitarian considerations as to shoot down the unfortunate Chinese when struggling for life in the

* *Times*, 2nd August.

† *Times*, 19th July.

‡ See *Times*, especially for 2nd August.

water. The summary destruction by torpedoes of a practically unarmed merchant vessel would have been a sufficiently grave responsibility without this addition. In point of fact, there is nothing laid down in definite terms in the Geneva Convention, or the St. Petersburg Declaration, which would exactly apply to the Japanese proceedings, and it would doubtless be contended that they were necessitated by the exigencies of war, and in this respect not opposed to any actual rule of International Law. This is true, but they were clearly at variance with the broad principles now generally accepted as morally binding, which found an unauthoritative but significant expression in Articles 12 and 13 of the Declaration of the Brussels Conference.

The further question arises as to whether the action of the Japanese was not, in the absence of any intimation of a state of hostilities, a gross violation of neutral rights.

It is quite clear in these days that, as between the contending parties themselves, no formal declaration of war is necessary.* Any discussion of this point would seem to be pure casuistry. As regards third parties, however, it is a well supported and altogether reasonable view that either some sort of clear notice should be given, in order to throw upon them the duties of neutrality (see Baker's Halleck, *International Law*, 1893, Vol. I., p. 542); or at any rate that there should be proof that the existence of war *de facto* was so public and notorious as to be in fact known to the neutral (see Hautefeuille, *Des Droits et Devoirs des Nations Neutres*, III., ch. 1; Vattel, *Droit des Gens*, III., ch. 4, § 51, etc.). In the present case, the *Kow Shing* affair was itself the real beginning of any serious war-like operations, so that constructive notice of war can hardly be imputed. To admit otherwise, is to admit the

* See the ordinary text-books, and also Maurice's *Hostilities without Declaration of War*, and articles by Prof. Holland and M. Féraud-Giraud in the *Revue de Droit International*, for 1885.

extraordinary principle that a war between A. and B. may be legitimately *commenced* and declared by a sudden attack on C.'s property, in which A. has a slight interest.*

But even apart from this fundamental violation of International Law, it was clearly the duty of the Japanese, under any circumstances, to conduct the *Kow Shing* to the nearest Japanese port for adjudication by a Court of Prize. Moreover, according to the best information we at present possess, the captain of the ill-fated vessel offered to take her back to her port of departure, if necessary, under Japanese escort, though there seems to be a probability that this very proper course would have been forcibly prevented by the Chinese troops on board.

If such a taking of the *Kow Shing* into a Japanese port was rendered impossible, owing to the opposition of the Chinese troops on board, the ship should have been captured in the usual way. It seems absurd to suppose that a fully equipped man-of-war, with available consorts to support her, could not have taken possession of an unarmed merchant vessel without summarily blowing her out of the water.

The cargo of the *Kow Shing* was at the worst contraband pure and simple (munitions of war), and analogues of contraband in the shape of troops. In such a case, the ship would have been clearly liable to condemnation (see *The Carolina*, 4 Rob. 256; *The Orozembo*, 6 Rob. 433, etc.; *The Friendship*, 6 Rob. 422, etc.).

The wanton destruction of life and property evinced in the reported facts of the case can hardly tend to procure for the offending party the sympathy of civilised nations. Motives of policy as regards Great Britain may very likely help to smooth down the difficulties created by the Japanese, but certainly a strict investigation

* This appears to be the view of Professor Holland in his recent letter to the *Times* on the subject. We can only say, with respect, that we entirely differ from his opinion.

should be insisted upon, followed by such pecuniary compensation and speedy punishment of the parties as the facts of the case render just.

* * *

The Institute of International Law at Paris.

There is a capital report of the meeting of the Institute, for 1894, held in Paris, in our contemporary, the *Revue de Droit International*, Brussels, Vol. 26, No. 3.

The chief topics dealt with were the questions as to the limits of Jurisdiction in Territorial Waters, and the principles as to Contraband of War. As regards the former question, the resolutions finally arrived at declared amongst other things that Territorial Waters extend to six marine miles (reckoning 60 miles to each degree of latitude) from low-water mark, or in the case of bays and straits where their width does not exceed the width of 12 marine miles at the mouth, "à moins qu'un usage continu et séculaire n'ait consacré une longueur plus grande."

The resolutions as to Contraband are very interesting, and comprise the following:—Art. 3 lays down that Contraband proper includes articles immediately capable of being used for purposes of war, and machinery and instruments for manufacturing such articles. Art. 5 enunciates that Articles *incipitibus usibus* are only contraband, if destined for the belligerent forces or for belligerent operations. Art. 8, continuing this subject, declares that if the vessel carrying such articles is ostensibly *en route* for a neutral port, the presumption is that this is her real destination. This presumption can, however, be rebutted by evidence to the contrary, in which case, a hostile destination must be conclusively proved by a minute investigation of all the circumstances of the case.

* * *

Extradition.

In the case of *In re Meunier* (L.R. [1894] 2 Q.B. 415), a somewhat lame attempt was made to obtain the discharge

of an Anarchist accused of two explosive outrages in France. The only points of any material interest decided in the case were (1) that the mere fact (assuming it to exist) that the evidence on which the committal is based was the uncorroborated evidence of an accomplice, does not necessarily invalidate the committal, and (2) that offences directed primarily against the general body of private citizens, even though "secondarily and incidentally . . . against some particular Government," are not "political" offences within the meaning of the Extradition Act. The case was clearly distinguishable from *In re Castioni*, L.R. [1891] 1 Q.B. 149.

* * *

Privileges of Ambassadors.

The decision of the Court of Appeal in the case of *Musurus Bey v. Gadban and Others* (see our last issue), has now been fully reported in L.R. [1894] 2 Q.B. 352. The order of the Divisional Court was upheld on all points. The Lords Justices gave utterance to some valuable *dicta* on the general position and immunity of Ambassadors, and referred with approval to the case of the *Magdalena Steam Navigation Co. v. Martin*, 2 E. & E. 94.

* * *

Private International Law.

Foreign Judgments.

A very curious point arose in the case of *In re Low ; Bland v. Low*, 7 Rep. 120. A debtor had died domiciled in England, but leaving property both in England and Scotland. A creditor whose debt was statute-barred in the former country but not in the latter, sued the administratrix in Scotland and recovered judgment. He then sought to prove in the administration in England, for the Scotch judgment debt. The Court of Appeal held, distinguishing *Phosphate Sewage Co. v. Molleson*, 4 App. Cas. 801, that he was entitled to do so, as the Scotch judgment was a new cause of action. It was, however, suggested by the Court that the adminis-

tratrix might very probably have succeeded at an earlier stage in obtaining an order in this country restraining the plaintiff from proceeding with his Scotch action and from registering his judgment when obtained (cf. *Graham v. Maxwell*, 1 Mac. & G. 71).

* * *

Contracts.

The case of *Hamlyn v. Talisker Distillery*, referred to in our last issue, has been well reported in 6 Rep. 14. The Judgments of the Lords contain a very clear enunciation of the principles applicable to such cases. It appears that the Court of Session in Scotland had decided that the *lex loci solutionis* of the main portion of the contract conclusively determined the rights of the parties under it. The Lord Chancellor most clearly repudiates this contention. He says in words which may almost serve as a final statement of the general rule adopted by our Courts in recent times—particularly since the *Missouri Case*, 42 Ch. D. 321—"When a contract is entered into between parties
"residing in different places, and where different systems
"of law prevail, it is a question in each case, with reference
"to what law the parties contracted, and according to
"what law it was their intention that their rights either under
"the whole or any part of the contract should be
"determined. In considering what law is to govern, no
"doubt the *lex loci solutionis* is a matter of great importance.
"The *lex loci contractus* is also of great importance . . .
"but neither of them is conclusive."

Lord Watson incidentally notes that "English and
"Scotch decisions differ in regard to the relative weight
"which ought to be attributed to them [*i.e.*, *loci contractus*
"and *solutionis*] when the place of contracting is in one
"forum and the place of performance in another."

It is curious that Mr. Westlake, in the latest edition of his valuable work on *Private International Law* (§ 212, and

note), adheres to his earlier statement of the rule on the subject, and refuses to recognise the principles most clearly laid down in recent decisions. As long ago as 1888, we suggested in this *Review* (No. CCLXX., for Nov., 1888, Art. *The Present Position of the Lex Loci Contractus*) as the true rule of law, the principles laid down in the following year by the Court of Appeal in the *Missouri Case*, and now finally established by the decision of the House of Lords in the case under discussion.

JOHN M. GOVER.

Quarterly Notes.

The Royal Commission on Labour and Agricultural Legislation.

We have before us the Parts containing the *Reports* of the Assistant Commissioners under the Royal Commission on Labour which deal with the present position and apparent desires and requirements of the Agricultural Labourer in Scotland (*Royal Commission on Labour. The Agricultural Labourer*. Vol. III. *Scotland*. Parts I. and II. Printed for Her Majesty's Stationery Office by Eyre and Spottiswoode. London. 1893). These Parts contain Reports, in Part I., by one of our own valued contributors, Mr. Henry Rutherford, and the late Mr. G. R. Gillespie; and in Part II. by Mr. R. Hunter Pringle and Mr. Edward Wilkinson, all Assistant Commissioners. Three at least out of these four Assistant Commissioners, undoubtedly, had a personal acquaintance with the country in which they were selected to hold their enquiry, and some of them had also a further practical knowledge of the relations prevalent at the time between landlord and tenant in Scotland. It appears to us that, on the whole, the conclusions at which they have arrived, by independent roads, are very much the

same, and that there is singularly little discoverable in the existing state of Scottish Agricultural life to warrant any demand upon the activity of the Legislation.

Thus Mr. Rutherford, in the final paragraphs of his Summary Report (Vol. III. *Scotland*. Part I., p. 34), states as his general conclusion that, while certain reforms of what may be called an Administrative character appear to be required, on the other hand, "suggestions of a character to interfere with the management of labour ought to be cautiously made." Of these suggestions, those connected with "a slight variation of holiday arrangements (if this can be effected without imperilling the admitted liberality of the employer)" and a "further improvement in cottage accommodation" are among the most likely points to arouse a desire for Legislation. Nevertheless, we are ourselves, from our own recollection of various parts (so widely separated as Kintyre and Galloway) of the country travelled by Mr. Rutherford, as well as from agreement with the broad principle which he lays down, inclined to agree with him in "not" being "prepared to say that the freedom now existing should be disturbed by legislative action." We should even probably have stated our view in stronger language, being free from any official character and responsibility. The late Mr. G. R. Gillespie's "conclusion as to the general relations between masters and men" was, that they were "good." A crofter, who had been a farm servant, said to him that, in his opinion, "the farm servant is the best paid man in our country." If this be so, in the opinion of those who have had personal experience of the position, it is difficult to see what Legislation can be required to better the position of the Agricultural Labourer.

Various causes are, of course, noted by the Assistant Commissioners as being at work, causing changes in the existing situation as compared with that of the previous generation of employers and employed. But one of these

causes is the spread of education, and that is a cause which present-day Legislation is not likely to remove. It is stated by Mr. Gillespie, in one of his Reports (Scotland, Part I., p. 109), that "the spread of education is said, as one of its first effects, especially among girls, to have bred an ambition to have less laborious and coarse work than country work necessarily is." And this feeling is not confined to the women, for Mr. Gillespie continues, "It is said that for every situation for a clerk which is vacant you will have several applicants, who, even if they get it, will have but a starvation maintenance as compared with what they might have enjoyed as ploughmen." This, of course, is a feeling which operates to drive the younger generation of both sexes into towns, and so leads to a considerable depopulation of the country districts, a phenomenon which, as Mr. Rutherford rightly points out, has been noticed by Dr. Longstaff in a Paper on *Rural Depopulation*, which we ourselves heard read before the Royal Statistical Society, 20th June, 1893 (*Journal*, Vol. LVI., Part III., for September, 1893), as being general throughout the greater part of Europe, as well as North America and Australia. In support of this view it may be remarked that the tendency to the overcrowding of towns by immigration from the country is recognised as a question of International interest by the place assigned to it in the Programme of the Division of Demography for the International Congress of Hygiene and Demography about to sit at Buda-Pesth, where it may be expected to attract expressions of expert opinion from all the countries represented in that thoroughly Cosmopolitan gathering. We may therefore hope to return to the consideration of this portion of the subject of the enquiry with some profit, when we are in possession of the facts and views laid before the Buda-Pesth Congress. For the present we do not see that any Legislation in the United Kingdom is likely to stop

a phenomenon so widely prevalent as is the modern over-population of towns, and consequent depopulation of the country. When Hungary suffers, not to speak of North America and Australia, Great Britain is not likely to be free.

The general opinion of the Assistant Commissioners as to Allotments appears to be that the Legislation on that subject has been a failure in Scotland, as we have from time to time pointed out, in this *Review*, that it has been in England. The causes are no doubt locally varied, but the result is the same. In England, the first rush of absurdly large demands for allotments soon gave place to a greatly lowered demand, and there is now often more difficulty in finding labouring men willing to apply than landlords willing to offer. In Scotland one acre was the maximum allowed to be applied for, and the limit, reasonable as it appears, would yet seem to have proved too large for its practical working by the Scottish Agricultural Labourer. The result has frequently been that, as is noted of the estate of the Marquis of Bute, in the Island of Bute, only two allotments out of forty-one that were made under the Act remain, "nearly the whole" having thus been "allowed to fall back to the estate." Mr. Rutherford's conclusion, which is practically identical with that already expressed in these pages, is that "under present circumstances the appropriation of land for occupation by farm servants is not keenly desired by those most interested." And under these circumstances, we should say, the Statute Book has been loaded with unnecessary Legislation, which, in our opinion, is a serious evil.

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An Ordinary of Scottish Arms and the Law of Arms in Scotland.

The handsome volume which the new Lyon King of Arms, Mr. J. Balfour Paul, Advocate, whom we remember with pleasure as a *confrère* during his editorship of the *umquhile*

Scottish Law Magazine, has devoted to the subject of the distinguished office which he now fills, naturally calls for some notice at our hands. For we have always upheld in these pages the Legal interest which properly belongs to Armorial and Genealogical studies, and we have recalled with pleasure the fact of the Legal training of such eminent Genealogical and Heraldic writers as the late John Riddell, and George Seton, happily still among us.

The marvellous subtlety, indeed, of John Riddell's legal mind, and his, to this day probably, unrivalled knowledge of the information lying buried under the dust of ages in Scottish Charter-Chests, cannot but be patent to all who have any acquaintance with Scottish Peerage Law and Scottish Genealogy.

Mr. Balfour Paul has not attempted much, as yet, in the way of generalising his own stores of knowledge, but has come into the field with the results of much, we fear it must be called, thankless labour in the shape of an *Ordinary* (*An Ordinary of Arms contained in the Public Register of all Arms and Bearings in Scotland*. By J. BALFOUR PAUL, Lyon King of Arms. Edinburgh, William Green and Sons. 1893). Work of this kind is in the nature of index-making—very toilsome, but rarely meeting with the recognition which such hard labour really deserves. We have done enough of it ourselves to have something of a fellow-feeling for the present Lyon, and we think he is entitled to our sincere thanks for what he has accomplished in the field which he has chosen for his first publication since his accession to office in succession to our late valued friend, George Burnett.

What Mr. Paul has set before us, however, is not to our mind so full of interest as a slight extension of his actual jurisdiction, if it be really such, would have made it. We think that he should have included the coats on the Register of his famous predecessor, Sir David Lindsay of the Mount, although they are not in the custody of the Lyon Office.

Without this matter, which is really not extraneous save in a highly technical sense, if at all, the list of names on the Public Register of Scottish Arms shews but poorly. Our thesis is that the coats on Sir David Lindsay's Register have a right to be considered as being on the Public Register, since the Privy Council of Scotland, as the present Lyon himself admits, practically authenticated them, in the terms which he cites (p. vi.):—"This Booke and register of armes done by Sir David Lindesay of the Month, Lyone King of Armes, reg. Ja. 5 contienes 106 leaves which register was approvine be the Lordis of His Majesties most honourable Privie Counsale at Halierudehous 9 December 1630." This was done when Sir James Balfour of Denmilne was Lyon King, a somewhat curious coincidence with regard to the action of his successor, Mr. Balfour Paul. We deplore as much as the present Lyon can the comparatively little attention which has been paid in Scotland to the Legislation of the country in the matter of the bearing of arms and the registration of the same. It is unfortunate for the Lyon that he should somehow have come to be looked upon as a kind of natural enemy, while in truth he ought to be, and would generally be found to be in fact, the friend of all who wish to have authority for their bearings. It can only be a pleasure to a Lyon King with anything of the spirit of Davie Lindsay or George Burnett in him (to name but two Lyons at different ends of the ladder of Time) to assist in the matriculation of a duly differenced coat for a cadet, and of the relative quarterings, if any. The work which such matriculation involves is far heavier than that of grants to *novi homines*, or applicants under Testamentary injunctions, and it is work of which the general public hears little and knows less. We happen to know something of some cases of both kinds named which have come under the consideration of the present Lyon, and we are duly sensible of the Judicial weighing of

evidence, and the searching of Records which cases of matriculation involve when, as may not unfrequently happen in Scotland, they have to be carried back to a date anterior to the earliest Scottish Registration Statute, the Act 1592. We hope to see Mr. Balfour Paul do good work in other parts of the varied field of Heraldry, where the interest may be even wider and the drudgery less severe, but in the meanwhile we are much beholden to him for what is, we trust, far from being the last edition of his *Ordinary of Scottish Arms*.

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The 11th International Medical Congress, Rome-Florence, April, 1894, and the 8th International Congress of Hygiene and Demography, Buda-Pesth, September, 1894.

Both of these Congresses, the former of which has held a most successful session alike in the Eternal City and in the City of Flowers in April last, and the latter of which is about to hold what promises to be a no less successful session in the twin City on the Blue Danube in September, embrace within their programme much that is of interest to the Jurist no less than to the student of Medical, Sanitary, and Statistical Science.

During the recent session of the International Medical Congress, the question of Quarantine was considered from the point of view of International Law in a Paper, *La Quarantaine en Droit International*, contributed by Mr. C. H. E. Carmichael, M.A., who was the Delegate of the Association for the Reform and Codification of the Law of Nations, and whose Paper was warmly approved by Professor Ruata, of the University of Perugia, himself the Editor of a Sanitary periodical, and the author of works dealing with this special branch of Sanitary Law. In the Division of Hydrology,—which was actually the Third International Congress of Hydrology and Climatology, held for this occasion in union with the International Medical Congress,—there was a considerable amount of criticism of certain features in the existing Sanitary Legislation for the

Kingdom of Italy, on a point upon which the general body of Italian Hydologists expressed strongly their desire for a revision of that Legislation, in the sense of a real instead of a perfunctory investigation by Government into the adequacy of the apparatus and accommodation for Hydrological operations at the establishments which are now so numerous and increasing throughout Italy.

The Minister of Public Instruction, Guido Baccelli, distinguished alike as a Classical Scholar and a man of Science, circulated among the members of the Congress a French version of the recent Italian Sanitary Legislation, and we have also received the publication of the Italian Association of Hydrology and Climatology (*L'Idrologia e la Climatologia*. Turin. Printed for the Association. 1894), to both of which we shall have occasion to return, in connection with some of the various points of Legal interest which arose in Rome, and which it may be interesting to compare with points arising at Buda-Pesth. There can be no doubt that Congresses of the magnitude of those which we are here considering exercise a widespread influence in educated circles, and have a direct interest for the Jurist and the Statesman, no less than for the man of Science strictly so called, whether his particular science be Medicine, Hygiene, or Statistics, and we, therefore, desire to keep our readers informed of the points at which the various subjects treated touch the more special interests of Jurisprudence, whether in its Scientific or its Practical aspect.

Reviews.

Abstract of Reported Cases Relating to Trade Marks (1876-92). With the Statutes and Rules. By JAMES AUSTEN-CARTMELL, M.A., of Lincoln's Inn, Barrister-at-Law. Sweet and Maxwell. 1893.

The subject of Mr. Austen-Cartmell's volume is one which frequently makes its appearance in our *Quarterly Digest*, and

which is of considerable importance in Law from an International as well as from a National point of view. Many of the cases in this book are, indeed, of an International interest, though technically cases in Municipal Law. It is scarcely possible to turn over half-a-dozen pages of the work before us without coming upon some cases which involves large International interests. Thus we find the two cases involving the use of Baron Liebig's name, which is now *publici juris*, viz., *Anderson v. Liebig's Extract of Meat Co.*, 45 L.T. 757, November, 1881, and *Re Anderson's Trade Mark*, 54 L.J. Ch. 1084, C.A., August, 1885. In regard to these cases it seems an awkward result of the alphabetical arrangement that the Court of Appeal case should meet our eye before the case in the Court below. Is not this somewhat of the type of the familiar cart before the horse, if we may be allowed so homely a phrase in so solemn a Judicial connotation?

There would seem to be something *prima facie* distinctive about the use of such a name as that of Baron Liebig, but the Court of Appeal held that the name of that distinguished chemist was *publici juris*. It is legally, therefore, no more distinctive than Smith, or Brown, or Jones, or Robinson, which seems hard upon fame earned by a life devoted to scientific research.

In connection with the *Apollinaris Company* cases (*Apollinaris Company v. Herrfeldt*, 4 R.P.C. 478, C.A., Oct., 1887, *Re the Apollinaris Company's Trade Mark*, 8 R.P.C. 137, C.A., Dec., 1890), it seems rather curious to read of a certain "General Hunyadi Janos" as the person immortalised in our Reports and on the labels affixed to bottles of mineral water. It may be doubted whether John Hunyadi, the deliverer of Western Europe from the domination of the Ottoman power, would recognise himself under such a description. Curiously enough, the proprietor of the spring at Buda-Pesth named after the celebrated patriot hero, Herr Andreas Saxlehner, has offered to entertain the members of the International Congress of Hygiene and Demography at his works, during the session of that cosmopolitan gathering.

Trade Mark cases seem often to turn on very technical points, not so much of imputable desire to deceive the public, which is itself a point not always easy to decide, but of how far a particular device, or word, or picture, or combination thereof, can be registered as a Trade Mark in this country. What constitutes a "fancy word" is a point apparently drawing forth great subtlety on the part of Her Majesty's Judges. To the

less learned mind, it may not unfrequently seem a question quite as hard to solve as the Scriptural problem, the key of which has not been given us, why the one should be taken and the other left.

Mr. Cartmell's book will, no doubt, find its way to many a practitioner's shelves, and develop into a second edition as the cases accumulate.

The Law relating to the Property of Married Persons. By DAVID MURRAY, M.A., Hon. LL.D. Glasg.; Member of the Faculty of Procurators in Glasgow. Glasgow: Maclehose, 1891.

It will be noticed that the mere title of this book does not convey any information as to the locality of the law with which it deals. It may be stated, at once, that, as might be conjectured from the name and titles of the author and the locality of publication, it is in the main, a Scotch law book, but it must be added that it contains a good deal of English and other law which is not Scotch. We learn that in Scotland, as elsewhere, the good old maxim "What's yours is mine, what's mine's my own" might, until recently, be fully applied to the male constituent of the "twain" conventionally supposed to be "one flesh." Dr. Murray is justly indignant at "the lying phrase, goods in communion"; he shows that the idea of a wife's property being her own and not the husband's was ruled to be against the laws of Nature and the rules of Morality; he shews that even if the husband purported to renounce his rights before marriage, they would run back upon him, "as water thrown upon a higher ground doth ever return," the moment the marriage was complete. Dr. Murray's book contains much useful information, and the arrangement of subjects is logical and satisfactory. It is to be regretted, however, that it is not always clear what particular law is being treated. At p. 65 we find the title "The Married Women's Property (Scotland) Act, 1881," which title seems to govern all down to p. 78; yet at p. 79, we come, to our surprise, on the title "The Present Law," as if the Act of 1881, instead of being now in force, had been a thing of the past. At pp. 12, 13, we read that the executrix of a deceased wife claimed from her husband, evidently in a Scotch case, the value of seven stones of lint promised to her as Morning gift, a rose noble gifted by the husband to the wife *ad fores ecclesie*, and the wedding ring; immediately after, we are told

that the Prayer-Book of King Edward VI. directed the husband, at the marriage, to "give unto the woman a ring, and other tokens of sponage," &c.; an apparently singular juxtaposition which recalls the forgotten fact that Knox and other Scottish Reformers were not the opponents of Liturgical worship that the Post-Revolution form of Scottish Presbyterianism has caused them to be taken for.

Dr. Murray's notes contain a good many illustrative fragments of laws of various countries; thus, *a propos* of the term "Gown" or "Lady's gown" (a morsel of separate property given to a wife by a purchaser of a husband's land), it is recorded that in the old Welsh laws a wife's "gowyn is, if she detected her husband with another woman, let him pay her six score pence for the first offence, for the second one pound; if she detects him a third time, she can separate from him, without losing anything that belongs to her." There is a good Appendix of Statutes; those of early date shew that legislation was sometimes necessary to save married women from being robbed by tricks of the law even of the little which the law gave them. An enactment of this kind, passed in 1503, is so quaint that we cannot refrain from quoting it:—

"ITEM.—It is statute and ordained, anent the exceptions proponed against widowes, persewand and followand their brieves of teirce, or the profite of their teirce, quhilk is oftymes proponed against thay widowes, that they were not lauchful wives to the persones their husbandes, be quhome they follow their said teirce; That therefore, quhair the matrimonie was not accused in their life-times, and that the woman askand this teirce, beand repute and halden as his lauchful wife in his life-time, sall be teirced, and bruik her teirce, but ony impediment or exceptions to be proponed against her, ay and quhil it be clearly decerned, and sentence given, that scho was not his lauchful wife, and that scho suld not have ane lauchful teirce therefore."

Not being ourselves members of the College of Justice, we would speak with becoming modesty of the value of Dr. Murray's book as regards the help it would give in a "guid ganging plea"; we may venture, however, to say that, wherever we have tested his statements of Scotch law with the decisions to which he refers, we have found them to be correct. The production of the book would do credit to any London publisher, and well sustains the reputation of the Printers to the University of Glasgow.

Kant's Principles of Politics, including his Essay on Perpetual Peace. Edited and translated by W. HASTIE, B.D. Edinburgh: T. and T. Clark. 1891.

This valuable little book has a special claim upon our attention at the present time, when so much is being said and written on the subject of Peace, Arbitration, Disarmament, and other kindred questions easier to raise than to solve. Kant wanted to see the state of Peace "established," and with this end in view drafted a series of Articles, the first of which was that the Civil Constitution in every State should be "Republican," but by this term he did not mean Anti-Monarchical, or at any rate Non-Monarchical, but only the opposite to Despotic. Russia, as at present governed, could not have answered to his definition, but the United Kingdom would, from his point of view, have been as truly Republican as the United States. His second Article involved a "Federation of Free States," which is something even wider, as conceived by him, we imagine, than the United States of Europe, as dreamed of by some Philosophical Jurists subsequent to Kant's days. His third Article involved the restriction of the rights of men as Citizens of the World, in what he called a "cosmopolitical system," to conditions of universal Hospitality. By this he meant the stranger's right, in consequence of his arrival on a foreign soil, not to be treated by its citizens as an enemy, which may seem a somewhat mild claim to make on behalf of men. His right was to be not that of a guest, but the right of resort. The Social relations between the various Peoples of the World, according to Kant, had "advanced everywhere so far that a violation of Right in *one* place of the earth is felt all over it." This, true in Kant's day, is truer by far in our day. True also is it, now as then, we believe, that "Perpetual Peace is no empty idea, but a practical thing, which, through its gradual solution, is coming always nearer its final realisation."

An Outline of Legal Philosophy. By W. A. WATT, M.A., LL.B., Member of the Faculty of Procurators, Glasgow. Edinburgh: T. and T. Clark. 1893.

This is an interesting volume, belonging, of course, as the title indicates, mainly to the Speculative and Scientific aspect of Law. Nevertheless, it covers a good deal of practical

ground in some of the questions which of necessity come up for consideration, and it is always suggestive.

Mr. Watt admits that there is much value in the work done by the Analytical Jurists, and that is perhaps a rather large admission now-a-days. It is surely no small thing for any set of men to have "sketched out a clear, if not wholly satisfactory, representation" of the contents of Law, which, as Mr. Watt says, "can be quite fairly separated from their theories of the origin and source of law." To Mr. Watt it is, indeed, "apparent" that "most of the divisions which the analysis yields, when pushed far enough, break down." This seems to leave us not much more than Austin *minus* Austin's analytical divisions. But this is the result of looking at the subject from a "philosophic point of view," under which "all legal divisions lose their absolute nature, and are seen to be only relatively of importance." Much the same fate befalls Truth in some schools of Continental Thought. There is no absolute Truth, we once heard a distinguished German Jurist say, in a mainly German gathering, which was yet of a Cosmopolitan character, and composed of persons who, whether Germans or not, held a different view as to Truth. The eminent speaker seemed much surprised when his hearers expressed an audible dissent from his views, and compromised by saying that at least that was his view of those whose Theology he was representing on the occasion to which we refer.

Mr. Watt divides Law, for the purposes of his work, under the heads of Public, Private, International, and Scientific. This may seem a rather odd division, as it might appear to deny a scientific character to the other branches of the subject, and it is not without a certain apparent analogy to the celebrated Faith, Hope, Charity, and Astronomy, whose figures, so legend runs, are to be seen at the four corners of the tower of a well-known College Chapel at Oxford. But on looking into the matter a little more closely we find that by Scientific Law, Mr. Watt means what is ordinarily called Private International Law, and which presents a considerable *crux* to many Jurists. For, notwithstanding the volumes which have been written on this branch of Jurisprudence (if it be a branch), from Savigny to Westlake, there are to be found not a few who deny that such a thing as Private International Law exists. Of course, if it does not exist, *cadit questio*, and nobody, whether

Jurist, or Professor, or Practitioner, need trouble his head about it. But Mr. Watt, having admitted its existence, must needs define it, and though his actual definition does not help us to see why he has given it the special distinctive epithet of "Scientific Law," we get a glimpse of that reason very shortly after the occurrence of the definition (p. 65). Private International Law, says Mr. Watt, is "a body of rules which are used to determine what law is applicable to a given case when any doubt exists on the matter." These rules, he continues, are "fairly definite, and are based upon scientific principles." Moreover, and this is the point at which we arrive at the International character which the definition supplied by Mr. Watt does not connote,—so far as they are scientific rules at all,—"and this," he rightly says, "is an important point,—they are universal. So far as they are not universal in their application, they must be pronounced defective." The question then arises, "whether it is in all possible cases, or only in certain doubtful instances," that the rules of Private International Law apply. Mr. Watt's sympathies are with what he calls the more advanced doctrine, "that the system, so far as it is a system, applies to every legal relation." If it only applies to difficult cases, says Mr. Watt, in effect, first define your "easy" cases, but this has not been done. To say that this has not been done is not necessarily the same thing as to say that it cannot be done, but the argument on Mr. Watt's side, which is substantially that of Mr. W. Galbraith Miller in his able *Lectures on the Philosophy of Law* (London. Griffin & Co., 1884), p. 240, seems a fair one. Mr. Miller, while warning his readers of the unorthodox character of his view, justifies it, to his own mind, at least, in a note, by pointing out that what Lord Westbury, in 1863, in *Cookney v. Anderson*, had taken away with one hand, so to speak, he restored with the other by the legal fiction that the doctrines of Private International Law are part of the Municipal Law of England, "and so," as Mr. Miller puts it, "we may reach the law of any part of the world." But, we may perhaps be permitted to ask, with Mr. Miller, "Is it not better to state the fact directly without the interposition of a fiction?" That is a question not altogether easy to answer. The real answer to it may be that Legal Fictions are somewhat *ancipitis usis*. We have only touched a small portion of the fringe of Mr. Watt's volume, but we hope we may have shown something of its value and its interest.

THE
Law Magazine and Review
Quarterly Digest
OF
ALL REPORTED CASES,
IN THE
LAW REPORTS, LAW TIMES REPORTS, LAW JOURNAL
REPORTS, AND WEEKLY REPORTER.

VOL. XIX., 1893-94.

BY
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LONDON :
STEVENS AND HAYNES,
Law Publishers,
BELL YARD, TEMPLE BAR, W.C.

1894.

LONDON :

PRINTED BY PEWTRESS & Co.,

28, LITTLE QUEEN STREET, LINCOLN'S INN FIELDS, W.C.

Quarterly Digest.

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- ZIERENBERG v. LABOUCHERE*, 20, ii.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1893.

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Barrister-at-Law.

Administration:—

- (i.) **Ch. D.**—*Elegit—Lands of Tenant in Tail—Devise—Exoneration—*1 and 2 Vict., c. 110, s. 13.—Lands to which a testator was believed to be entitled in fee, but of which he was in fact tenant in tail, were, in his lifetime delivered in execution under an elegit. He devised them to W., who survived him, and died intestate, leaving H. his heir-at-law. H. was tenant-in-tail in possession of the lands under the instrument which settled them. *Held*, that the charge created by the judgment, though enforceable against the estate tail of H., was not so enforceable in exoneration of the testator's personal estate.—*Anthony v. Anthony*, 41 W.R. 667.
- (ii.) **Ch. D.**—*Legacy—Non-appropriation—Increase in Value of Residue—Right of Legatee.*—A testator devised and bequeathed his residue upon trust as to £20,000, to pay the income to C. for life, with remainder to his children, and as to the residue upon trust for residuary legatees. He died in 1882. The sum of £20,000 was not raised, invested, or appropriated. The residuary estate increased in value. H., the sole surviving executor and trustee, was one of the residuary legatees. *Held*, that C. and his children were entitled to £20,000 and interest, and were not entitled to share in the increase in value of the residuary estate.—*Campbell v. Campbell*, 69 L.T. 184.
- (iii.) **P. D.**—*Will Annexed—Foreign Will—Foreign Sureties.*—A French subject, resident in France, made a will there constituting a domiciled Frenchman his universal and residuary legatee. Part of the estate was in the English funds, and there were no debts in this country. *Held*, that the administrator might give an administration bond with two foreign sureties.—*In the goods of De Beaufort*, L.R. [1893] P. 231.

Appeal:—

- (i.) **P. C.**—*Criminal Case—Leave to Appeal Refused.*—In a criminal case misdirection by a judge, either in leaving a case to the jury where there is no evidence, or founded on an incorrect construction of the Indian Penal Code, is not sufficient to make it proper to grant leave to appeal, especially where no miscarriage of justice has resulted.—*E. p. Macrea*, L.R. [1893] A.C. 346.

Banker:—

- (ii.) **H. L.**—*Customer—Broker paying Client's Money to his own Account.*—The appellants, who held certain shares, instructed X., a stockbroker, to sell the shares, and to pay the proceeds to their credit at certain banks. X. sold the shares to another broker, who, in the ordinary course of business, paid for them by a cheque in favour of X. The cheque was paid by X. to his own credit at the respondent bank. X.'s account was at that time overdrawn, to an amount exceeding the amount so paid in. X. afterwards drew out some small sums, less in the whole than the amount so paid in. X. became insolvent, and the appellants claimed to recover the amount of the cheque from the respondent bank. At the time of paying in, the bank knew that the amount represented the proceeds of the sale of shares, but did not know, and did not inquire, whether the money paid in was in the broker's hands as agent or otherwise. *Held*, that the bank was entitled to retain the amount in discharge *pro tanto* of the debt due from X.—*Thompson v. Clydesdale Bank*, L.R. [1893] A.C. 283; 69 L.T. 156.

Bankruptcy:—

- (iii.) **Q. B. D.**—*Bankruptcy Notice—Amendment—Bankruptcy Act, 1883, s. 4.*—The power to amend a bankruptcy notice is limited to the amendment of formal defects, and it is a question of degree what defects are formal and what are substantial. A bankruptcy notice was issued on March 23rd for £219, the amount of a judgment debt; which had in fact been reduced by payments to £200. On March 27th an order was made on a sheriff's interpleader, the effect of which was to stay execution as to a further sum of £45. The notice was served on March 28th. At the hearing the registrar amended the notice by reducing the amount from £219 to £155. *Held*, that the defect was not merely formal, and ought not to have been amended.—*E. p. Nugent; in re Miller*, 69 L.T. 260.
- (iv.) **Q. B. D.**—*Proof—Loan to Trader—Interest Varying with Profits—New Agreement—Partnership Act, 1890, ss. 2, 3.*—In 1880 a loan was made to a trader at a rate of interest varying with his profits. In 1886 a new agreement was made, under which the lender agreed "to continue his existing loan for one year upon the terms herein contained." The terms included interest at the rate of 10 per cent. In 1893 the borrower became bankrupt. *Held*, that the agreement of 1886 amounted to a repayment of the loan and a relending of the same amount on new terms, and that the lender was entitled to prove in competition with the other creditors.—*In re Hildesheim; e. p. Hildesheim*, 69 L.T. 294.
- (v.) **Q. B. D.**—*Sheriff—Costs of Execution—Possession Retained by Request—Bankruptcy Act, 1890, s. 11, sub-s. (1).*—The sheriff took possession under a *ji. fa.*, and remained in possession without selling at the request of the execution creditor and of the debtor. The debtor became bankrupt, and the taxing master allowed only eight days' possession money. *Held*, that the whole of the possession money claimed by the sheriff ought to be allowed.—*In re Hurley*, 41 W.R. 653.

- (i.) **Q. B. D.**—*Voluntary Settlement—Purchase from Donee—Bankruptcy Act, 1883, s. 47.*—In 1891 the bankrupt made a voluntary settlement upon his sister of a policy of insurance. In 1892 he and his sister assigned the policy to G. to secure a past debt and a present advance. *Held*, that the security was good as against the trustee. The estate of the bankrupt had had the benefit of the advance, and the settlement *pro tanto* was for valuable consideration.—*E. p. Stephenson v. Pike*; in *re Naylor*, 62 L.J. Q.B. 460.

Bill of Exchange:—

- (ii.) **C. A.**—*Validity—Payable to Order—Blank—Bills of Exchange Act, 1882, ss. 3, 5, 7, 55.*—An instrument which was made payable to “— order,” the blank never having been filled in, must be construed as meaning that it was payable to “my order,” that is to the order of the drawer, and, having been indorsed by him, is a valid bill of exchange.—*Chamberlain v. Young*, L.R. [1893] 2 Q.B. 206.

Bill of Sale:—

- (iii.) **C. A.**—*Supposed Bill of Sale—Erroneous Registration—Action for Damage.*—An action will not lie for damage suffered by the plaintiff in consequence of the defendant without malice causing to be registered as a bill of sale a document which was not in fact a bill of sale.—*Horsley v. Style*, 69 L.T. 222.

Building Society:—

- (iv.) **Q. B. D.**—*Winding-Up—Advanced Members—Obligation to Pay Future Instalments—Outside Creditors.*—Advances had been made by a building society on deeds which provided for the re-payment of the loans by instalments. The rules empowered advanced members to redeem on notice, on payment of all future instalments of principal and interest, less a discount on moneys paid in advance of the due dates. The society was wound-up, there being outside creditors. *Held*, that the advanced members were liable to be placed on the list of contributories, and were compellable to pay at once the future instalments of principal and interest, less such discount as would they have been entitled to upon a voluntary redemption.—*The London Provident Building Society v. Morgan*, L.R. [1893] 2 Q.B. 266.

Charity:—

- (v.) **C. A.**—*Will—Bequest to “Religious Societies.”*—Testator bequeathed his residue “to the following religious societies, viz.”—then followed a blank—“to be divided in equal shares among them.” *Held* (1) that this was to be treated as a bequest for “religious purposes”; (2) that it was therefore, *primâ facie*, a bequest for “charitable purposes”; (3) that a scheme for the application *cy-près* of the gift should be directed.—*White v. White*, 41 W.R. 683.
- (vi.) **Ch. D.**—*Wesleyan Chapel—“Endowment”—Trustees—Charity Commissioners—Accounts—Exemption—Charitable Trusts Act, 1853, ss. 62, 66.*—Land was, in 1811, conveyed to trustees on trust to erect a Wesleyan chapel thereon, and to collect money, and to hold the same, and also the rents and profits of the chapel and other buildings erected on the land upon trust to apply the surplus income, after providing for repayment of loans, for the support of preachers in the circuit; and on further trust, if necessary, to sell the property, and apply the proceeds in the purchase or erection of another chapel to be held upon the like trusts. A chapel was built, and used and registered as a place of worship. Adjoining land was also purchased and conveyed to the

trustees upon the like trusts. The purchase money for the additional land was raised by subscriptions, loans, and sales of parts of the property. Buildings were erected on the land by means of legacies, subscriptions, and collections. A scheme was settled by the charity commissioners on the application of the trustees. The commissioners sought to compel the trustees to render accounts. *Held* (1) that the exemption in sect. 62 only extended to the chapel, and not to the other buildings; (2) that the property, other than the chapel, was held on "a particular and specific trust," and constituted an "endowment" within the meaning of the section; (3) that the property was not within either of the other exemptions of the section, and that the trustees must render accounts of all the trust property except the chapel.—*In re St. John Street Wesleyan Methodist Chapel, Chester*, L.R. [1893] 2 Ch. 618; 69 L.T. 105.

Colonial Law:—

- (i.) **P. C.**—*Fiji—Boundaries of Town—Construction of Proclamation.*—Where by proclamation the limits of a town, and, therefore, of rateable property within it, were fixed, the western boundary to be the sea-coast at high-water mark, the eastern boundary to be at a specified distance therefrom, the northern and southern boundaries to connect the eastern by lines of specified lengths with certain points on the high-water mark, and it appeared that the appellants had been rated on lands reclaimed by them beyond the high-water mark as it existed at the date of the proclamation, but within that mark as it existed at the date of the rate being imposed, *held*, that the lands were rateable. The true construction was that the western boundary varied from time to time with the high-water mark as it shifted.—*Smart v. Town Board of Suva*, L.R. [1893] A.C. 301; 68 L.T. 774.
- (ii.) **P. C.**—*Jersey—Seigniorial Lands—Alienation in Mortmain—Rights of Seigneur.*—Where land in Jersey held of the Queen as lady of the *seigneurie* is brought into mortmain, the purchaser must indemnify the Crown against the loss or diminution of the seigniorial rights. But the Crown is not also entitled to preserve its rights by interposing a nominal vassal called *homme vivant mourant et confisquant* between itself and the holders in mortmain in order to pay duties and service in respect of the property. The Court should not generally refer the amount of indemnity to experts, but should fix the percentage to be paid, and should refer it to experts to ascertain the value of the land.—*Attorney-General for Jersey v. Turner*, L.R. [1893] A.C. 326; 69 L.T. 161.
- (iii.) **P. C.**—*New South Wales—Municipalities Act, 1867, s. 163—Practice.*—Lands not the property of Her Majesty but occupied by a municipality for the purpose of water supply are within the exemption from rateability contained in the section. The point whether the land in question was in fact used for public purposes not having been raised in the Court below, *held*, that it could not be raised on appeal.—*The Council of Randwick v. Australian Cities Investment Corporation*, L.R. [1893] A.C. 322; 68 L.T. 771.
- (iv.) **P. C.**—*New Zealand—Powers of Local Legislature—Proceedings against Absentees—15 & 16 Vict., c. 72.*—The legislature of New Zealand has power to subject to its tribunals persons who are neither by themselves nor their agents present in the colony. A law of the local legislature authorising the local Courts in any case of contracts made or to be performed in the colony to decide whether they will or will not proceed in the absence of the defendant is *intra vires* and reasonable.

It is for the Courts of other countries to decide whether they will enforce a judgment pronounced in New Zealand against an absentee without service of the writ, and the question does not affect the validity of the local law.—*Ashbury v. Ellis*, L.R. [1893] A.C. 339; 69 L.T. 159.

Company :—

- (i) **Ch. D.—Borrowing Powers—Verbal Security—Memorandum—Articles.**—The memorandum of association stated as one of the objects the borrowing of money by the issue of debentures or securities, or without such security. The articles empowered the directors to borrow as they should think fit. Creditors claimed in respect of a verbal charge on the uncalled capital. *Held*, that the word "issue" in the memorandum was ambiguous, that the articles might be looked at to explain it, and that as the power given by the articles was general, the memorandum must be construed to authorise a verbal charge.—*In re Tilbury Portland Cement Co.*, 62 L.J. Ch. 814.
- (ii) **C. A.—Director—Misfeasance—Promoter—Nominal Vendor.**—P. and Q. owned two quarries, and had the option of taking a lease of a third, the S. quarry. They wished to form a company to work the quarries, and obtained the assistance of A. and B. They obtained a lease of the S. quarry to P., Q., A. and B., and on the same day the four agreed to sell the three quarries to an intended company for cash and paid-up shares, A. and B. to receive 120 shares each. The company was formed, B. was a director; the agreement was confirmed, and A. and B. received their shares. The articles provided that the agreement should not be impeached on the ground of any of the directors being vendors or promoters, and that they should not be accountable for benefits secured to them. *Held*, that the insertion of the names of A. and B. as vendors was merely a device to enable them to get shares as payment for promoting the company, although, if they had been *bona fide* interested in the S. quarry, the transaction could not have been impeached; that the issuing of the shares to A. and B. was a misfeasance on the part of the directors, and that the articles did not protect B., as it was not known to the company that he was not really a vendor; and that B. must contribute to the assets the nominal value of the shares issued to him and A.—*In re Westmoreland Green and Blue Slate Co.*; *Bland's Case*, L.R. [1893] 2 Ch. 612.
- (iii) **Ch. D.—Parliamentary Deposit—Abandoned Undertaking—Creditors—Solicitor—Parliamentary Agent—Parliamentary Deposits and Bonds Act, 1892, s. 1.**—Where an undertaking sanctioned by Parliament had been abandoned, and the company was a "paper company," that is, a company which had never had any existence beyond statutory incorporation, and there was a contest between several claimants to the deposit, including the solicitor and the parliamentary agent, *held*, under the circumstances, that none of the claimants were entitled to rank as creditors against the deposit.—*In re Manchester, Middleton, and District Tramways Co.*, L.R. [1893] 2 Ch. 638; 62 L.J. Ch. 752; 68 L.T. 820; 41 W.R. 681.
- (iv) **Ch. D.—Parliamentary Deposit—Abandonment of Undertaking—Creditors—Parliamentary Deposits and Bonds Act, 1892, s. 1, sub-s. 2.**—The creditors who are entitled to claim against the deposit on the abandonment of an undertaking sanctioned by Parliament are not confined to the creditors of the company in respect of the particular undertaking abandoned.—*E. p. Bradford and District Trams*, 62 L.J. Ch. 668; 69 L.T. 181.

- (i.) **Ch. D.—Power to Sell Undertaking—Agreement to Sell—Validity.**—The S. company had power under its memorandum to sell all or any part of its business or property for cash, shares, or obligations of another company. The S. company agreed to sell its assets to the D. company, in consideration partly of cash, and partly of the procuring by the D. company of a waiver by holders of shares in the S. company of their rights to participate in such cash. *Held*, that the proposed sale was *ultra vires*.—*Holst v. Sydney and Louisberg Coal and Rail Co.*, 69 L.T. 132.
- (ii.) **C. A.—Preferred and Deferred Shareholders—Reconstruction—Scheme—Ultra vires—Companies Act, 1862, ss. 133, 161.**—The capital of a company consisted of preference and ordinary shares, the preference shares having no priority as regards capital. Resolutions were passed for winding-up, in order to carry out a scheme of reconstruction, whereby for each preference and ordinary share in the company a preference or ordinary share in a new company, with a sum per share treated as unpaid, was to be issued. *Held*, that the majority of the shareholders was not entitled to bind a dissentient minority to the extent proposed, and that the scheme was *ultra vires*.—*Simpson v. The Palace Theatre*, 69 L.T. 70.
- (iii.) **Ch. D.—Lien on Shares—Execution Creditor—Purchaser—Priorities.**—The articles of a company gave it a primary lien on the shares of every member for any debt due from him to the company. *Held*, that as between B., a member of the company, and G., a purchaser of part of B.'s shares without notice of a certain debt owed by B. to the company, the debt, though charged on all the shares of B., ought to be thrown exclusively on those retained by him to the exoneration of the shares sold to G., the transfer of which, though executed, the company had declined to register until payment of B.'s debt. *Held*, also, that persons who had obtained a charging order on the untransferred shares in respect of a judgment obtained against B., were not in the position of mortgagees or purchasers who had advanced money, and could not be in a better position in relation to the shares than B. himself.—*Gray v. Stone & Funnell*, 69 L.T. 282.
- (iv.) **C. A.—Shares—Agreement to Take—Underwriting—Alleged Conditional Application—Companies Act, 1862, s. 35.**—A., at the request of X., the agent of the promoters of a company, signed an underwriting agreement addressed to B., by which he undertook to subscribe or find subscribers for certain shares. The undertaking authorised B. to apply for shares in the name of A. A. gave X. at the same time a letter, which stated that the undertaking was executed on the understanding that it should be void if A. did not receive an acceptance thereof by a specified time. The letter was not communicated to B., and A. did not receive the acceptance. The shares were applied for in his name, and allotted to him. He repudiated the allotment. *Held*, that he was estopped from denying that B. was his agent to apply for shares, and that the secret condition which was not made known to the company did not affect the undertaking.—*E. p. Harrison; in re Bentley & Sons and The Yorkshire Breweries Co.*, 69 L.T. 204.
- (v.) **C. A.—Shares—Issue as Paid-Up—Contract—Consideration—Companies Acts, 1862, s. 38, sub-s. 4; 1867, s. 25.**—A company has no power to issue shares as fully paid-up, as a gift or bonus, to its members, although a contract to do so has been made without fraudulent intent, and duly registered. A company was carried on for some years as a private company. It was decided to throw the company open to the public, but before doing so, certain shares were allotted as fully paid-up to the directors and original shareholders. The allotment was

made in pursuance of a duly registered contract, which stated the consideration of the issue to be the past services and expenses of the allottees in forming the company and establishing the business. *Held*, in the winding-up, that no payment had been made for the shares either in money or money's worth, and that the allottees of the shares must be held liable for their full nominal value.—*In re Eddy-stone Marine Insurance Co.*, L.R. [1893] 3 Ch. 9; 62 L.J. Ch. 742; 41 W.R. 642.

- (i.) **C. A.**—*Winding-up—Foreign Company—Office and Assets in England—Compulsory Order—Wish of Parties—Remuneration of Liquidator—Companies Act, 1862, s. 199 (2)—Companies (Winding-up) Act, 1890.*—A company was registered in Australia, but not in England. Its registered office was in Melbourne, but it had an office and assets in England. The company was being wound up in Australia, and a creditor's petition was presented in England for a compulsory winding-up, but at the hearing all parties wished the petition to stand over. *Held*, by Williams, J., that a compulsory order must be made, but that the liquidator's authority would be limited to collecting and preserving the English assets, with liberty to apply in chambers, and that his remuneration must be limited to a percentage on the English assets. *Held*, by C. A., that the matter was one of discretion, and that the Court would not interfere with the order of the Court below.—*In re Federal Bank of Australia*, 62 L.J. Ch. 561; 68 L.T. 728.
- (ii.) **C. A.**—*Winding-up—Fraudulent Preference—Mutual Credits—Directors' Fees—Companies Act, 1862, ss. 38 (7), 101, 164.*—The provisions of the Bankruptcy Act, 1883, dealing with mutual credits do not apply to cross claims between a company and its members in respect of calls, so as to render valid a payment by the company, which, but for that clause, would be a fraudulent preference. Shortly before the presentation of a petition to wind up a company, and at a time when it owed large debts, two of the directors were indebted to the company for calls unpaid, and their fees as directors were unpaid. Cheques of the company for the amounts of such fees were exchanged for cheques of the directors of equal amounts in favour of the company. *Held*, that the payments were a fraudulent preference, and must be repaid with interest.—*In re Washington Diamond Mining Co.*, 69 L.T. 27; 41 W.R. 686.
- (iii.) **C. A.**—*Winding-up—Scheme of Reconstruction—Meeting of Creditors—Proxies—Companies Act, 1862, s. 91—Joint Stock Companies Arrangement Act, 1870, s. 2—Stamp.*—In ascertaining whether there is a three-fourths majority of the creditors summoned to attend a meeting to consider a scheme of arrangement, creditors abroad and present by proxy must be considered. In allowing such creditors to be present by proxy, regard must be had generally to the provisions of the Companies Acts, and the practice thereunder, with reference to voting by proxy, and therefore the instrument of proxy must be in writing. But the Court has power to decide how the meeting shall be held, and the proxies produced and proved, and is not, therefore, bound to follow the general practice of requiring the production of proxies at the meeting, when the result of so doing would be to defeat the scheme of arrangement. It may therefore act on the evidence of proxy voting abroad afforded by telegrams from the country in which such voting has taken place. If the instruments of proxy are stamped with a 1*l*s. stamp on their arrival in England, pursuant to sect. 15 of the Stamp Act, 1891, it is not necessary to specify therein the day of meeting.—*In re English, Scottish, and Australian Chartered Bank*, 69 L.T. 268.

Compensation :—

- (i.) **P. C.**—*Abstraction of Water—Principle of Valuation.*—Where a company under statutory powers abstracted certain streams of water from the property of a landowner, and were bound by their Act to make compensation to him, *held*, that the damage or loss suffered by the landowner was in being deprived of the power of using his property, and that the measure of compensation was the value of his interest in the streams, considering the possibility of his making use of them in the future, though he had previously derived no pecuniary benefit from them.—*Trent-Stoughton v. Barbados Water Supply Co.*, 69 L.T. 164.

See Railway, p. 21, iii.

Confidential Relationship.—*See Executor*, p. 10, iv.

Conspiracy.—*See Tort*, p. 26, iv.

Contract :—

- (ii.) **Ch. D.**—*Agreement with Corporation—Not under Seal—Ratification—Indefinite—Municipal Corporations Act, 1882, s. 22, sub-s. 2.*—By two letters to a corporation C. offered to surrender his existing lease, to pull down an old building and erect a new one within twelve months, provided that the city would grant a new lease for a stated term and at a stated rent, and to agree to a line being drawn to straighten the boundary of the premises. The Public Improvement Committee, through the town clerk, accepted the proposal, "subject to the approval of council." By another letter C. added a new term to his proposal. The council ratified the agreement made by the committee, and rejected the new term. The committee had not been appointed under seal, nor was the ratification under seal. C. repudiated the contract, and the corporation sued for specific performance. *Held*, that the contract could not be enforced, not having been made or ratified under seal. *Held*, also, that there was a want of definiteness in the terms of the proposal, and that the contract could not be enforced because no date was fixed for the surrender of the old lease or the commencement of the new term.—*Mayor, &c., of Oxford v. Crow*, 69 L.T. 228.

- (iii.) **Ch. D.**—*Construction—Shares in Company—Underwriting Agreement.*—A. signed an agreement with L., an agent of the promoters of an intended company, that A. would subscribe, or find subscribers, for 200 shares in the company, and apply for the same on the first day when the list was opened. The agreement contained provisions whereby A.'s undertaking was to stand only for his proportion, rateably with other underwriters, of such shares as were required to make up the number subscribed for by the public to the number underwritten, and authorised L. to apply for the shares in the name, and on behalf of, A. A. made no application. The public applied for only a small number of shares, and after the lists were closed L. applied in A.'s name for 164 shares, which were allotted to A. A. applied to have his name removed from the register, on the ground that he had only agreed to take a proportion of the shares which the public had not applied for, and had had no notice how many the public had applied for, and no opportunity of exercising his option to find subscribers. *Held*, that A.'s obligation was to apply for shares on the first day the list was opened, and no such notice was therefore necessary to enable him to discharge it or to exercise his option, and that the shares had been rightly allotted to him.—*Shaw v. Bentley and Co. and the Yorkshire Breweries*, 68 L.T. 812.

- (i.) **C. A.**—*Statute of Frauds—Memorandum in Writing—Description.*—Upon a contract for a mortgage of land, the solicitor for the intending mortgagor wrote a letter in which he said that he had called on "the solicitors to the proposing lender and had arranged the proposed loan as follows." *Held*, that this was not a sufficient description of the intending mortgagee to satisfy the Statute of Frauds.—*Pattle v. Austruther*, 69 L.T. 175; 41 W.R. 625.

Copyright :—

- (ii.) **Q. B. D.**—*Play—Original—Liberty of Representation.*—The plaintiff commenced to write a play in the autumn of 1889; it was finished in March, 1892, and performed for the first time on June 30th, 1892. The defendant wrote a play similar to the plaintiff's play, but which was, as between him and the plaintiff in every respect original, which he wrote and completely finished between the end of 1889 and the early part of 1890, and which was performed for the first time on July 4th, 1892. *Held*, that the defendant having written and finished his play before the plaintiff had written and finished his, was entitled to the sole liberty of representing the same under 3 & 4 Wm. IV., c. 15, s. 1, and that, his right having vested, there was nothing in any subsequent legislation to deprive him of it, and that, consequently the plaintiff could not sue him for infringement of his copyright.—*Reichardt v. Sapte*, L.R. [1893] 2 Q.B. 308.

Covenant :—

- (iii.) **Ch. D.**—*Restrictive—Lease—Assignee—Sale by Lessor—Right of Lessor to Enforce—Similar Covenants by Him—Liability.*—S., the owner in fee of the E. estate, demised a piece of land part thereof to a lessee who assigned the same with the consent of S., the assignee covenanting with S. "his heirs and assigns, as owner for the time being" of the E. estate, that he, his executors, administrators, and assigns would not use the premises for any trade other than that of a cheesemonger. The assignee's executrix and universal legatee sub-let to X., who agreed to use the premises only as a cheesemonger's shop. X. assigned to B., who signed a memorandum agreeing to perform the agreement made by X. The premises formed part of a row of shops, which had formerly belonged to S., and S. on selling some of the other shops had covenanted with the purchasers that the premises in question should not be used for purposes for which B. was using them, and which were in contravention of B.'s agreement. S. had subsequently parted with all his interest in the E. estate. *Held*, that S. was still liable on the covenants which he had made with the purchasers of his shops, and had therefore an interest in enforcing the covenant previously made with him as owner, and that, as B. had taken with notice of the title of which the restrictive covenant formed part, S. was entitled to enforce the same against him.—*Spencer v. Bailey*, 69 L.T. 179.

Criminal Law :—

- (iv.) **C. C. R.**—*Child—Parent Deprived of by Fraud—Fraud Practised on Mother.*—To support an indictment under 24 & 25 Vict., c. 100, s. 56, for unlawfully by fraud taking away a child under the age of fourteen years with intent to deprive the father of its possession, it is not necessary to prove that the fraud was practised on the child. Fraud practised on the child's mother, whereby possession of the child was obtained is sufficient.—*Reg. v. Bellis*, 69 L.T. 26.
- (v.) **C. C. R.**—*Embezzlement—Servant.*—A person employed to collect moneys which it is the duty of his employer to collect, but who is at liberty to collect such moneys as and when he thinks proper, is not a

clerk or servant, within 24 & 25 Vict., c. 96, s. 68. The prisoner was employed by an illiterate overseer of the poor to collect the rates and keep the rate-books, which it was the duty of the overseer to collect and keep during a period of six months. During the six months the overseer gave no orders to the prisoner, and did not interfere in the collection of the rates or the keeping of the books. At the end of the period the prisoner made default in accounting for certain of the moneys collected by him, and was convicted of embezzling the same. *Held*, that he was not the servant of the overseer, and was therefore wrongly convicted.—*Reg. v. Harris*, 69 L.T. 25.

Easement:—

- (i.) **C. A.**—*Ancient Light—Crown—Lessees of—Prescription Act*, ss. 1, 2. *See Vol. 18*, p. 115, i.—*Held*, that the plaintiff was not entitled to an injunction against the lessees from the Crown.—*Wheaton v. Maple*, L.R. [1893] 3 Ch. 48; 69 L.T. 208; 41 W.R. 677.

Ecclesiastical Law:—

- (ii.) **Consistory Court of London.**—*Faculty—Removal of Bodies—Order in Council—Burials Act*, 1857, s. 23.—Where an Order in Council under the Act directed the churchwardens to remove the remains buried under the church, and to re-bury them in some other consecrated burial ground, and it appeared that such removal was advisable on sanitary grounds, a faculty was decreed giving authority for the removal and re-burial of the remains, but confining the re-burial to a specified place, and containing provisos as to the mode of removal and re-burial, and safeguarding the interests of the relatives of persons whose remains were proved to have been buried beneath the church.—*Rector and Churchwardens of St. Michael, Bassishaw v. The Parishioners of the Same*, L.R. [1893] P. 233.

Executor:—

- (iii.) **Ch.**—*Devastavit—Payment of Debt—Statute-barred.*—An executor who pays a statute-barred debt after a judicial decision that the debt is not payable out of the estate by reason of the bar, commits a devastavit; and a creditor who receives payment of such debt, with knowledge of the circumstances, is liable to repay the same to the estate.—*Midgley v. Midgley*, 69 L.T. 241; 41 W.R. 659.
- (iv.) **Ch. D.**—*Gift to by Beneficiary—Confidential Relationship.*—A testator appointed X., a solicitor, as one of his executors. Soon after the testator's death each of the beneficiaries under the will signed a document whereby he signified his "wish and request" that the sum of £1,000 should be paid to X. out of the estate "in consideration of his consenting to act as an executor of the will, and as an expression of my approval of his conduct in relation to the affairs of the deceased;" and whereby he agreed to bear his proportionate share of such sum. It was in conflict whether the gift was first proposed by X. or not. The money was paid to X., and the plaintiff, a beneficiary, claimed to have the document signed by him cancelled, and his share of the £1,000 repaid. X. had first brought the proposal before the plaintiff, though it was said to have been done at the request of another beneficiary. *Held*, that such a gift could only be upheld on proof that there was no pressure, and that the beneficiary had acted deliberately and with full knowledge; that, although there were no threats, there was necessarily pressure from the position of the parties, and that the plaintiff was entitled to succeed.—*Wheeler v. Sargeant*, 69 L.T. 181.

Friendly Society :—

- (i.) **Q. B. D.**—*Rules—Arbitration Committee—Validity of Award—Irregularity—Justices—Jurisdiction—Friendly Societies Act, 1875, s. 22 (d).*—A member of a friendly society, whose claim to sick pay was questioned, and was referred to the arbitration committee, was not allowed by such committee to be present while witnesses adverse to his claim were examined. The award was against his claim. *Held*, that it was irregular and invalid, and that the Justices in Petty Sessions had jurisdiction to hear an application by him under the Act made within forty days.—*Bache v. Billingham*, 62 L.J. M.C. 117.

Goods :—

- (ii.) **Q. B. D.**—*Detention of—Magistrate's Order—Special Damage—Action for—Metropolitan Police Courts Act, 1839, s. 40.*—A person who has obtained from a police magistrate an order for the delivery of goods wrongfully detained is not thereby precluded from subsequently bringing an action for special damage arising out of the same detention.—*Midland Railway Co. v. Martin and Co.*, L.R. [1893] 2 Q.B. 172.

Highway :—

- (iii.) **Q. B. D.**—*Extraordinary Traffic—Excessive Weight—Highways and Locomotives Act, 1878, s. 23.*—"Extraordinary" traffic is different from excessive weight, and must be extraordinary in kind as well as in degree, the comparison being made, not between the use complained of and the use of other roads in the neighbourhood, but between the use complained of and the ordinary use of the same road previously to the use complained of. The appellants carted coal from their colliery to a station on a road which was a bye-lane, part of which had been previously used and made up only for ordinary agricultural traffic and light landsale coal traffic, and part for the ordinary light traffic of the neighbourhood, and no part of which had been made up for such traffic as that of the appellants, though the coal trade was the staple trade of the district. The appellants' carts were loaded excessively, as they had to travel downhill. The cost of repairing the road was greatly increased after the appellants commenced their traffic over it. The justices held that the traffic was "extraordinary" and the weight "excessive." *Held*, that they were right in so deciding.—*Etherley Grange Coal Co. v. Auckland District Highway Board*, 69 L.T. 286.
- (iv.) **Q. B. D.**—*Rate—Publication—No Church—Notice—Highway Act, 1835, s. 27—7 Will. IV, and 1 Vict., c. 45, s. 2—45 and 46 Vict., c. 20, s. 4.*—The hamlet of H., which maintained its own highways but not its own poor, was within and formed part of the poor-law and ecclesiastical parish of K. There was no church at H., and the surveyor had published notices of the highway rate by posting them up outside a schoolroom and a Wesleyan chapel (conspicuous places) within the hamlet. He did not affix a notice to the door of the church at K. *Held*, that the publication was good, and the rate valid.—*Reg. v. Wolferstan*, 62 L.J. M.C. 148.

Husband and Wife :—

- (v.) **Q. B. D.**—*Desertion—Alimony—Married Women (Maintenance in Case of Desertion) Act, 1886, s. 1.*—X. and his wife lived together in Cornwall. On her approaching confinement they agreed that she should go to her mother's house at Exmouth. She did so and was confined there, but X. refused to allow her to return to cohabitation or to contribute to her maintenance. *Held*, that there was desertion, and that the Justices at Exmouth had jurisdiction to order alimony.—*Chudley v. Chudley*, 62 L.J. M.C. 97.

- (i.) **P. D.—Divorce—Cruelty.**—Cruelty consisting of neglect, coldness, and insults, which had affected the petitioner's health to such an extent that it would be dangerous for her to live with the respondent, *held*, sufficient when coupled with adultery to entitle a wife to divorce.—*Walmesley v. Walmesley*, 69 L.T. 152.
- (ii.) **P. D.—Divorce—Domicile—Pleadings.**—It is not absolutely necessary that the question of domicile should be raised by the pleadings. The Court may allow it to be raised at the hearing if the evidence suggests a doubt as to the jurisdiction of the Court.—*Parkinson v. Parkinson*, 69 L.T. 53.

Inclosure:—

- (iii.) **C. A.—Award—Alleged to be Ultra Vires—Lapse of Time.**—The plaintiff in an action to restrain trespass, claimed to be entitled to the property in question under an award made in 1808 under a local Inclosure Act of 1801. The defendant alleged that the award was *ultra vires*, on the ground that the Act gave no power to the Commissioners to allot any part of the property in question. *Held*, that as so many years had elapsed without the propriety of the award having been disputed, the Court would not now allow the validity thereof to be questioned.—*Mickelthwait v. Vincent*, 69 L.T. 57.

Infant:—

- (iv.) **C. A.—Custody of—Parent—Right to Guardianship—Habeas Corpus.**—On an application by *habeas corpus*, by the mother, who was the legal guardian of a female infant, aged about fifteen, for the custody of such infant, *held*, that having by virtue of the Judicature Act, the jurisdiction of Chancery with regard to the custody of infants, the Court, although the mother had not been guilty of any misconduct to disentitle her to the custody of the child, would, if satisfied that it was for the welfare of the child, refuse to give the mother such custody.—*Reg. v. Gynghall*, L.R. [1893] 2 Q.B. 232.
- (v.) **Ch. D.—Marriage Settlement—Repudiation—Reasonable Time.**—An infant executed a marriage settlement in 1857 without the sanction of the Court, whereby her reversionary interest (subject to a tenancy for life) in a share of real estate was settled on her for life for her separate use without power of anticipation, with remainder to her husband, if he should survive her, for life, with remainder upon trust for the children of the marriage. In 1865 she was deserted by her husband, and in 1869 she obtained a protection order. In 1890 the tenant for life died, and since that time the wife received some income from the property, which she would have been entitled to receive whether bound by the settlement or not. She had done no other act to confirm the settlement. There were two children of the marriage. *Held*, that she was still entitled to repudiate the settlement.—*Farrington v. Forrester*, L.R. [1893] 2 Ch. 461; 69 L.T. 45.
- (vi.) **H. L.—Marriage Settlement—Repudiation—Effect of.**—Decision of C. A. (*see* Vol. 17, p. 134, i) affirmed.—*Edwards v. Carter*, 69 L.T. 153.
- (vii.) **Ch. D.—Mortgage by—Fresh Mortgages after Attaining Twenty-one—Ratification—Infants' Relief Act, 1874, ss. 1, 2.**—An infant, entitled to a share in real estate, joined in a mortgage and further charges thereon for securing the sum of £500 in all. After he attained twenty-one the mortgaged property was re-conveyed, and the mortgagors executed another mortgage, which did not refer to the old mortgages, to the same mortgagees, to secure £550. He died about a year after, and his heir-at-law claimed to have all the mortgages declared void. *Held*,

that the covenants contained in the first mortgages, and the assurance of the hereditaments contained therein would be void, but that the covenant for repayment contained in the mortgage executed after the infant attained twenty-one could not be considered merely as a ratification, but was a fresh covenant for good consideration, and that such mortgage could not be declared void.—*Foulkes v. Hughes*, 69 L.T. 183.

Justices:—

- (i.) **Q. B. D.**—*Dismissal of Information—Order for Costs—Committal—Summary Jurisdiction Acts, 1848 and 1879.*—Where an information is dismissed by justices, and an order for costs is made against the complainant, if no sufficient distress is found, and it is proved that the complainant has, or had since the date of the order, means to pay the costs, such order may be enforced by committal.—*Reg. v. Lord Mayor of London; e. p. Boaler*, L.R. [1893] 2 Q.B. 146.

Landlord and Tenant:—

- (ii.) **C. A.**—*Covenant to Repair—Inherent Defect.*—A lease of a house contained a covenant by the lessee well and sufficiently to "repair, uphold, sustain, amend and keep" the house, and yield up the same "so well and substantially repaired, upheld, sustained, maintained, amended and kept." Before the end of the term one of the walls was bulging out, and after the end of the term the house was condemned as dangerous by the district surveyor and was pulled down. The foundation of the house was a timber platform, which rested on a muddy soil. The bulging of the wall was caused by the rotting of the timber. The house was at least 100 years old. The solid gravel was seventeen feet below the surface of the mud. There was evidence that during the term the wall might have been repaired by underpinning. *Held*, that as the defect was caused by the natural operation of time and the elements upon a house, the original construction of which was faulty, the lessee was not liable under his covenant to make it good.—*Lister v. Lane*, L.R. [1893] 2 Q.B. 212; 69 L.T. 176; 41 W.R. 626.
- (iii.) **C. A.**—*Distress—Breaking open Outer Door—Main Door of Warehouse within Premises.*—A landlord's broker entered upon demised premises to distrain for rent. Being peaceably and lawfully in a courtyard, part of the premises, he broke open the main and outer door of a warehouse, part of the premises, which abutted on the courtyard, and there distrained on certain goods. *Held*, that the door of the warehouse was an "outer" door within the meaning of the rule that outer doors may not be broken, and that the fact that the broker was already lawfully within the demised premises did not entitle him to break open such door.—*American Concentrated Must Co. v. Hendry*, 62 L.J. Q.B. 388; 68 L.T. 742.
- (iv.) **Q. B. D.**—*Want of Title of Lessor—Estoppel—Third Parties—Distress.*—Although a tenant who has been let into possession of land by a lessor is estopped from disputing the lessor's title, there is no estoppel against third parties, who do not claim possession under the tenant. Accordingly a person who lets premises to which he has no title to a tenant, cannot distrain for arrears of rent on the goods of a third person which have been brought into the premises by the tenant's licence.—*Tadman v. Henman*, L.R. [1893] 2 Q.B. 168.

Lease:—

- (v.) **Ch. D.**—*Consideration—Receipt—Conveyancing Act, 1881, s. 55.*—To constitute a receipt in the body of a deed within the meaning of the

section above-mentioned, there must be, after the statement of the consideration, express words acknowledging the receipt thereof. Therefore, where a building lease was expressed to be granted in consideration of the moneys expended by the lessee, and of the rent thereafter reserved, and the covenants by the lessee thereafter contained, *held*, that there was not a sufficient receipt within the meaning of the section.—*Renner v. Tolley*, 68 L.T. 814.

Licensing:—

- (i.) **Q. B. D.**—*Alehouse—Removal of Occupier—Special Transfer Sessions—Application by New Tenant—Notice—Intoxicating Liquors Licensing Act, 1828, s. 14—Licensing Act, 1872, s. 40, sub-s. 2.*—Justices assembled in special transfer sessions cannot refuse an application under sect. 14 of the Act of 1828, in respect of a house previously licensed, upon the ground that the applicant has given no such notice of his intention to apply as he would have been bound to give had his application been merely for a transfer under sect. 4.—*Reg. v. Hughes*, 62 L.J.; M.C. 150.
- (ii.) **Q. B. D.**—*Beerhouse—Certificate—Application for—Notice—Time—Wine and Beerhouse Act, 1869, s. 7—Licensing Act, 1872, ss. 40, 43, 50.*—The twenty-one days notice which must be given to the overseer by a person intending to apply for a justices' certificate, is to be computed from the day on which the application is actually made, not from the first day of the general annual licensing meeting at which the application is made.—*Reg. v. Pownall*, L.R. [1893] 2 Q.B. 158.
- (iii.) **Q. B. D.**—*Proprietary Club—Sale of Liquor to Members.*—A. applied to become a member of a proprietary club, and having paid a subscription was elected an honorary member pending inquiries, and was then supplied with intoxicating liquors, for which he paid. *Held*, that upon the facts, the proprietors of the club might be convicted for selling intoxicating liquors without a licence.—*Bowyer v. The Percy Supper Club*, L.R. [1893] 2 Q.B. 154.

Limitations:—

- (iv.) **Ch. D.**—*Money Deposited for Safe Custody—Loan—Bailment.*—In 1875 C. handed to his brother G. £300, saying, "You had better take care of it till I want it." G. gave no receipt. He paid it into his bankers, and paid an interest for it to C., who never asked for it back. After G.'s death in 1891, C. sued his executors for the money, and they pleaded the Statute. *Held*, that the money was handed over for safe custody and was not a loan, and that the Statute did not begin to run till demand was made.—*Tidd v. Overell*, 69 L.T. 255.
- (v.) **Ch. D.**—*Receipt of Money by Agent—Fraud of Agent—Claim against Principal—Trustee Act, 1888, s. 8.*—The defendants as trustees of a settlement were mortgagees of premises, which they sold in 1878 under their power of sale. A solicitor, who acted for them and for the plaintiff, the second mortgagee, fraudulently represented that he was the plaintiff's agent to receive the balance of purchase money due to the plaintiff. The defendants allowed him to receive such balance which he kept, paying interest to the plaintiff on the amount due on his mortgage till 1891, when he became bankrupt. The plaintiff sued the defendants for an account, alleging that the solicitor was the defendants' agent in paying the interest. *Held*, that the solicitor was not acting as the defendants' agent in paying the interest, and that the plaintiff's claim was not kept alive; that the defendants had been guilty of negligence, but that it did not amount to fraud so as to prevent them from claiming the benefit of the statute; that the money

was neither "still retained by" the defendants, nor had been "previously received" by them and "converted to their own use"; and that sect. 8 of the Trustee Act, 1888, therefore applied, and the action failed.—*Thorne v. Heard*, 68 L.T. 791; 41 W.R. 636.

See Principal and Surety, p. 20, vi.

Local Government:—

- (i.) **C. A.—Building Line—Taking Down Houses—Public Health Act, 1875, s. 155.**—The owner of a house in a street took out the front wall of the ground and first floors, and removed the first floor, in order to turn the two lowest storeys into one shop. The second floor was not disturbed, but was shored up with timber, and afterwards supported by iron girders and brick piers. Soon after the erection of the girders and piers the urban authority prescribed a building line, and moved to restrain the owner from building in front of it. *Held*, that as a substantial part of the house and its front wall had been left standing, neither the house nor the front wall had been taken down, within the meaning of the section above-mentioned, and that the power to fix a building line had not arisen.—*Attorney-General v. Hatch*, L.R. [1893] 3 Ch. 86; 68 L.T. 854.

Malicious Prosecution:—

- (ii.) **C. A.—Criminal Proceeding—Tramway Company—Passenger Refusing to pay Fare.**—Proceedings taken under sect. 51 of the Tramways Act, 1870, against a passenger for avoiding, or attempting to avoid, payment of his fare, are proceedings in respect of a criminal offence, so that an action for malicious prosecution will lie against the persons taking them.—*Rayson v. South London Tramways Co.*, L.R. [1893] 2 Q.B. 304.

Master and Servant:—

- (iii.) **Q. B. D.—Access Provided for Workman to go to Work—Refusal by Workman to use Access as Required—Absenting from Work—Employers and Workmen Act, 1875.**—A., a collier under an engagement to work in a mine, attended at the pit's mouth to go down in a cage. A. and other colliers refused to go down in the cage because a collier who did not belong to A.'s union was in it. A. was willing to go down in the cage when it came up a second time, but the manager refused to allow him to do so. *Held*, that the refusal of A. to avail himself of the convenient access to his work in the manner and at the time required by his employers amounted to an absenting himself from his work, and was the proper subject for a claim for damages under the Act.—*Press v. Bowes and Partners*, 62 L.J. M.C. 145.
- (iv.) **P. C.—Common Employment.**—To an action for damages for injury caused by the defendant's servant, the defence of common employment is not applicable unless the plaintiff was at the time of the injury in the defendant's actual employment in the relationship of master and servant. Where the defendant was a stevedore, and the plaintiff a servant of the shipowner, on whose ship the injury was caused, and the person whose negligence caused the injury was a servant of the stevedore, *held*, that the defence of common employment was not applicable.—*Cameron v. Nystrom*, L.R. [1893] A.C. 308; 68 L.T. 772.
- (v.) **Q. B. D.—Defect in Machinery—Reasonable Fitness—Employers Liability Act, 1880, s. 1, sub-ss. 1, 4.**—Defect in the condition of machinery means the absence of reasonable fitness to secure safety in the operation for which it is intended. An obvious chance of danger from the want of care of the class of men to whom machinery is

entrusted must not be excluded in considering its "reasonable fitness." The absence of any safeguard against danger arising from such an ordinary and probable occurrence as a slip in the management of a winch is a defect.—*Stanton v. Scrutton & Sons*, 62 L.J. Q.B. 406.

- (i.) **Q. B. D.**—*Workman*.—Where the duties of a potman in a public-house, although manual, are substantially of a menial or domestic nature, he is not a "workman" within the Employers Liability Act.—*Pearce v. Lansdowne*, 62 L.J. Q.B. 441.

Metropolis Management Act:—

- (ii.) **Q. B. D.**—*Hanging out Articles in Front of House*—*Michael Angelo Taylor's Act*, s. 65—*Metropolis Management Act*, 1855, s. 119.—The section last mentioned is not inconsistent with, and does not impliedly repeal, the provisions of the earlier section relating to the particular offence created by that section.—*Wyatt v. Gens*, L.R. [1893] 2 Q.B. 225.
- (iii.) **Q. B. D.**—*Height of Building*—*New Street—Corner House*—*Metropolis Management Act*, 1862, s. 85.—The respondents built a house at the corner of an old street and of a new street less than fifty feet wide; the front of the house and the main entrance were in the old street. Held, that the house was "erected on the side of a new street," and that by building it of a height greater than the width of the new street, without the written consent of the London County Council, the respondents had committed an offence.—*London County Council v. Lawrance & Sons*, L.R. [1893] 2 Q.B. 228; 41 W.R. 688.
- (iv.) **Q. B. D.**—*Valuations—Appeals—Time for Hearing—Valuation of Property (Metropolis) Act*, 1869, s. 42, sub-s. 13.—The justices in assessment sessions have no jurisdiction to hear the year's appeals against the valuation list after the 31st of March in each year.—*Reg. v. London Justices and London County Council*, 41 W.R. 668.

Mortgage:—

- (v.) **Q. B. D.**—*Power of Sale—Improper Exercise of Damages—County Court—Conveyancing Act*, 1881, s. 21, sub-s. 2—*County Courts Act*, 1888, s. 56.—An action by a second mortgagee against a first mortgagee for loss caused by an improper exercise of his statutory power of sale, may be brought as a common law action in the county court, when the amount claimed is within the county court limit.—*Ames v. Higdon*, 69 L.T. 292.
- (vi.) **Ch. D.**—*Sale—Irregularity—Purchaser without Notice—Conveyancing Acts*, 1881, s. 21, sub-s. 2; 1882, s. 3, sub-s. 1.—C. mortgaged property to secure £6,000 and interest. The mortgagee transferred the mortgage to B., in consideration of £6,316, the mortgage debt and interest. Two days afterwards B., in professed exercise of the statutory power of sale, conveyed the property to M. in consideration of £6,316. L. purchased the property from the representative of M. Previously to such sale, L. was shewn a recent valuation, which stated that the property was worth £8,700. He made no requisitions as to the circumstances attending the sale by B. to M. The incumbrancers of C.'s equity of redemption obtained a declaration that the sale by B. to M. was invalid, on the ground that the power of sale had not been duly exercised. Held, that L. was not guilty of culpable negligence in not obtaining further information as to the circumstances of such sale, and was not affected by notice of the irregularity, and that his title could not be impeached.—*Bailey v. Barnes*, 68 L.T. 818.
- (vii.) **C. A.**—*Term—Trust to Raise Money—Transfer of Mortgage—Costs*.—Decision of Ch. D. (see Vol. 18, p. 125, v.) reversed.—*Sewell v. Bishop*, 69 L.T. 68.

Nuisance :—

- (i.) **C. A.**—*Statutory Authority*—Decision of Ch. D. (see Vol. 18, p. 126, iii.) affirmed.—*Rapier v. London Tramways Co.*, L.R. [1893] 2 Ch. 588.

Parliamentary Election :—

- (ii.) **Q. B. D.**—*Costs of Returning Officer—Return of Disallowed Charges—Parliamentary Elections (Returning Officers) Act, 1875, s. 3, sub-s. 6, s. 4.*—It is the duty of the returning officer, whose account has been taxed, to return to each candidate, out of his deposit, a proportionate amount of any part of the account which has been disallowed, whether such candidate has or has not been a party to the taxation.—*Martin v. Tomkinson*, L.R. [1893] 2 Q.B. 121; 62 L.J. Q.B. 400; 69 L.T. 285.

Partnership :—

- (iii.) **C. A.**—*Annual Accounts—Time for Taking—Profits Between Nominal Date and Actual Signing*.—Decision of Ch. D. (see Vol. 18, p. 89, iii.) affirmed.—*Hunter v. Dowling*, 62 L.J. Ch. 617; 68 L.T. 780.

Patent :—

- (iv.) **H. L.**—*Co-Owners of—Rights as to Working—Mortgagee*.—Where a patentee has assigned to each of two persons a moiety of his patent rights, each assignee can work the patent without being liable to account to the other for profits; and none the less if one of the assignees be mortgagee of the other's moiety.—*Steers v. Rogers*, L.R. [1893] A.C. 232; 62 L.J. Ch. 671; 68 L.T. 726.
- (v.) **Ch. D.**—*Register—Assignments and Licences—Patents, &c. Act, 1883, s. 23, rr. 65—69.*—A patentee wrote to A. a letter, agreeing for the considerations therein mentioned to grant him the sole and exclusive liberty, power, and authority to make, use, exercise, and vend his invention in the United Kingdom, paying a royalty of the amount to be mutually agreed upon. A. procured the letter to be registered. It was disputed whether the amount of the royalty had been subsequently fixed. *Held*, that even if the amount had been fixed, the letter did not give A. any legal or equitable right to the patent, that it ought not to have been registered, and must be struck off the register.—*Lumley v. Fletcher*, 69 L.T. 129.
- (vi.) **Ch. D.**—*Validity—Known Contrivance—Subject-Matter—Anticipation*.—The plaintiff had patented an invention for a safety skirt for riding habits, the main feature of which was that the skirt had a seam from the bottom of the skirt to the waist, which had special fasteners which would burst open on a slight strain. An earlier patentee had described a safety skirt with a burstable seam part of the way up. *Held*, that the plaintiff's alleged invention was the mere use of a known contrivance for a known purpose, being only a discovery that if the seam was extended further it would work better, and that it was not a good subject-matter of a patent.—*Nicoll v. Swears & Wells*, 69 L.T. 110.

Penalty :—

- (vii.) **Q. B. D.**—*Relief against*.—An agreement for the sale of patent rights provided that the purchase money should be £14,000, of which £1,400 was paid down, the remainder to be paid by instalments. It was provided that two machines should be furnished at net cost price, one half to be paid on ordering the machines and one half on their completion. It was also provided that if the purchaser should make default in payment of any of the instalments at the stipulated times, or if there

should be a breach of any of the conditions mentioned in the agreement, then all payments made to the vendors should be forfeited as liquidated damages. The purchaser paid the deposit and half the cost price of two machines, but failed to pay the first instalment, and the vendors rescinded the contract, refused to supply the machines, and claimed to forfeit the sums paid. *Held*, that although the words "liquidated damages" were used, the case was one of penalty, and a reference was ordered as to the actual damage sustained by the vendors. —*Barton v. Capewell Continental Patents Co.*, 68 L.T. 857.

Poor Law :—

- (i.) **Q. B. D.—Rates—Non-Payment—Proceedings against Occupier—Evidence.**—A person summoned to shew cause why a distress warrant for non-payment of poor rates should not issue against him has a right to call evidence to shew that he is in fact a mere caretaker, though his name appears on the rate book as occupier.—*Reg. v. Simmonds*, 62 L.J. M.C. 106.
- (ii.) **Q. B. D.—Rating—Drainage Works—Exclusive Occupation.**—The owner of a mineral estate made a tunnel to convey water from the mines into an artificial water course, which discharged into a stream. The appellants were incorporated by Act of Parliament, and drainage areas were defined by the Act. They were empowered to use the tunnel already made, to make other tunnels or drainage works; to enter upon, take, use, or purchase an easement over lands for that purpose, and to take a royalty on minerals raised from mines drained by their works. The owner of the land through which the tunnel and water course passed granted them such easement in and through, and right of drainage through, and exclusive right of using the tunnel and water course already made, as was necessary for the purposes of the Act. The appellants did not acquire any right to any part of the soil of the tunnel save such as was conferred upon them by the Act. *Held*, that they had such an exclusive occupation of the tunnel and works as to be rateable in respect thereof.—*Halkyn District Mines Drainage Co. v. Assessment Committee of Holywell Union*, 69 L.T. 112.
- (iii.) **Q. B. D.—Rating—Exclusive Occupation.**—The B. Local Board, had under a private Act, the exclusive right of laying gas mains and pipes in the township of B., and of keeping them in repair. They were bound, however, to afford the use of the same to the corporation of S. for the supply of gas for public and private purposes within the township, in consideration of certain payments per 1000 cubic feet of gas. *Held*, that the corporation had no such exclusive occupation of the gas-pipes as to render them rateable to the poor rate.—*Corporation of Southport v. Ormskirk Union Assessment Committee*, 62 L.J. Q.B. 471.
- (iv.) **Q. B. D.—Rating—Tenant for Short Term—Claim to Pay by Instalments—Demand, Sufficiency of—Poor Rate Assessment and Collection Act, 1869, s. 2.**—Where an occupier for a short term having been served with a demand in writing for the full amount of a rate claims to pay such rate by instalments, a distress warrant for non-payment of any instalment may be issued upon proof that payment of such instalment has been verbally demanded by the overseers.—*Overseers of Walton-on-the-Hill v. Jones*, L.R. [1893] 2 Q.B. 175; 62 L.J. M.C. 123.

Practice :—

- (v.) **Q. B. D.—Application for Relief under Conveyancing Acts—Conveyancing Acts, 1881, ss. 14, 69; 1892, s. 4.**—An application by an under lessee for a vesting order under sect. 4 of the Act of 1892 may be made by defence and counter-claim in the lessor's action for possession.—*Warden and Governors of Highgate School v. Sewell*, L.R. [1893] 2 Q.B. 254; 62 L.J. Q.B. 476; 69 L.T. 118; 81 W.R. 637.

- (i.) **C. A.**—*Change of Parties—Death—Remittal to County Court—Application to compel Plaintiff to Proceed.*—Decision of Q. B. D. (see Vol. 18, p. 128, vi.) affirmed.—*Duke v. Davis*, L.R. [1893] 2 Q.B. 260; 41 W.R. 673.
- (ii.) **C. A.**—*Discovery—Affidavit of Documents—Claim of Privilege—Description.*—In an action of trespass, to which the defence of a right of way was pleaded, the plaintiff's affidavit of documents stated that he had certain documents numbered 1 to 26, tied up in a bundle marked A, and initialled by him; and that they related "solely to the title or to the case of the plaintiff, and not to the case of the defendant, nor do they tend to support it." And the plaintiff claimed privilege for the said documents. *Held*, that they were sufficiently described; that the fact that the affidavit did not state that they contained nothing impeaching the case or title of the plaintiff did not render it insufficient; and that the documents were privileged.—*Budden v. Wilkinson*, 41 W.R. 657.
- (iii.) **Q. B. D.**—*Discovery—Inspection of Documents—Privilege—Report by Defendants' Servant.*—An accident having happened on which the plaintiff subsequently founded an action against the defendants, the defendants' servant made a written report thereon before the action was brought or threatened. Privilege was claimed for the document on the ground that it was made solely for the use of the defendants' solicitor in anticipation of an action, to advise the defendants in reference thereto. *Held*, that the document was privileged, as there was a high probability that litigation would take place, and the report was made in view of such litigation to be laid before the defendants' professional adviser.—*Collins v. London General Omnibus Co.*, 68 L.T. 831.
- (iv.) **Q. B. D.**—*Discovery—Photographs of Documents—R.S.C., 1883, O. xxxi., r. 14; O. l., r. 3.*—The Court has power to allow a party to an action to take photographs of documents in the possession of the other party.—*Lewis v. Earl of Lonsborough*, L.R. [1893] 2 Q.B. 191; 61 L.J. Q.B. 452.
- (v.) **C. A.**—*Inquiry as to Damages—Particulars.*—An injunction had been granted restraining the defendant from breach of a covenant in restraint of trade, with an inquiry as to damages, and the defendant was ordered to make an affidavit of documents. *Held*, that he was not entitled before making such affidavit to a statement of the heads under which the plaintiff sought damages.—*Maxim Nordenfeldt Guns and Ammunition Co. v. Nordenfeldt* (No. 2), 62 L.J. Ch. 749.
- (vi.) **Q. B. D.**—*Interpleader—Interest of Applicant—Collusion—R.S.C., 1883, O. lvii., r. 2 (a) (b).*—Where an applicant for relief by way of interpleader, though he lays no claim to any part of the sum in dispute, has agreed with one of the contending parties to do what he legally can to defeat the claim of the other, he is disentitled to relief on the ground of collusion.—*Murietta v. South American Co.*, 62 L.J. Q.B. 396.
- (vii.) **C. A.**—*Interpleader—Money Paid to Sheriff to Abide Order—Withdrawal of Claim—No Specific Order—Action Against Sheriff.*—Judgment on an interpleader issue or the withdrawal of one of the parties thereto is not a termination of the interpleader proceedings; and the words of an interpleader order in Form No. 56a of App. X.—"that the said sum do abide the order of the judge of the county court"—refer to a specific order dealing with the money, and are not satisfied by a judgment in favour of one of the parties to the issue. Therefore where money had been lodged with the sheriff by the claimants under an order in the above form, *held*, that neither the withdrawal of his claim by the execution creditor, nor the payment by him of the sheriff's

costs, nor the entering of judgment in the county court for the claimants, entitled them to maintain an action against the sheriff for money had and received.—*Discount Banking Co. v. Lambardi*, 69 L.T. 223.

- (i.) **Q. B. D.**—*Jury—Disagreement—Verdict of Majority—Consent of Parties—New Trial.*—When a jury disagrees, and the parties agree to accept the verdict of the majority, such consent means only that they will treat such verdict as equivalent to a unanimous verdict, and the unsuccessful party is not debarred from applying for a new trial, on the ground that the verdict is against the weight of evidence and unreasonable.—*Groom v. Shuker*, 69 L.T. 293.
- (ii.) **C. A.**—*Libel—Justification—Particulars*—R.S.C., 1883, O. xix., rr. 6, 7. —In an action for libel, where the charge made against the plaintiff in the alleged libel is general in its nature, a defendant who pleads justification must state in his particulars the facts upon which he relies in support of his justification.—*Zierenberg v. Labouchere*, L.R. [1893] 2 Q.B. 183; 69 L.T. 172; 41 W.R. 675.
- (iii.) **Ch. D.**—*Patent—Threats of Proceedings—Injunction—Undertaking in Damages.*—The undertaking in damages usually inserted in an order granting an interim injunction should not be inserted in an interim order in a patent action restraining one of the parties from publishing threats of legal proceedings for infringement of his alleged patent.—*Fenner v. Wilson*, L.R. [1893] 2 Ch. 656; 68 L.T. 748.
- (iv.) **Ch. D.**—*Petition—Lands Clauses Act, 1845—Costs.*—A petition was presented for the transfer out of Court to the official trustees of charitable funds of certain consols, representing the purchase moneys of lands belonging to a charity and taken by three railway companies. Held, that the costs payable by two of the companies whose purchase moneys were represented respectively by £44 and £36 consols, must not exceed the amounts which those companies would have had to pay if the application had been made by summons.—*Attorney-General v. St. John's Hospital, Bath*, 62 L.J. Ch. 707; 69 L.T. 178.

Principal and Agent:—

- (v.) **C. A.**—*Authority to Pledge Deeds—Authority Exceeded—Right of Pledgee.*—Where the legal owner of deeds entrusts them to an agent with authority to pledge them for a specified sum, and the agent pledges them for a larger sum with a person who deals with him *bona fide* and without notice of the limitation of authority, the pledgee is entitled to hold the deeds as security for the sum actually advanced.—*Brocklesby v. Temperance Building Society*, 62 L.J. Ch. 816; 69 L.T. 91.

Principal and Surety:—

- (vi.) **Ch. D.**—*Co-Surety—Contribution before Payment—Bankruptcy—Provable Debt—Limitations.*—A surety against whom judgment has been recovered by the principal creditor for the full amount of the guarantee, may maintain an action against a co-surety for contribution before paying anything in respect of the judgment. For this purpose the allowance of a claim by the creditor against the estate of a deceased surety is equivalent to a judgment. Where the principal creditor is a party to the action, the surety may obtain an order upon the co-surety to pay his proportion to the creditor. Where such creditor is not a party to the action, the surety may obtain a prospective order directing the co-surety to indemnify him from further liability upon payment by him of his own share. The liability of a bankrupt co-surety to contribute is a debt provable in bankruptcy, though ascertained at the time of the bankruptcy. The Statute of Limitations

does not begin to run against a surety suing a co-surety for contribution until the liability of the surety has been ascertained; *i.e.*, until the claim of the principal creditor has been established against him; although at the time of the action for contribution the statute may have run as between the principal creditor and the co-surety.—*Wolmerhausen v. Gullick*, L.R. [1893] 2 Ch. 514; 61 L.J. Ch. 773; 69 L.T. 75.

- (i.) **P. C.—Release of Co-Surety—Discharge.**—Where, without the knowledge of the other sureties, the creditor had released one of five co-sureties from “all debts due by him to the bank (the creditor) at this date,” *held*, that the remedy against the other sureties was gone; and that the legal effect of the release could not be modified by evidence of verbal negotiations prior to the release for the purpose of shewing an agreement to reserve rights against the sureties.—*Mercantile Bank of Sydney v. Taylor*, L.R. [1893] A.C. 317.
- (ii.) **P. C.—Release of Principal Debtor—Discharge of Surety—Novation.**—A creditor released his principal debtor and accepted a third person as debtor in his stead, the surety for the principal debtor agreeing to guarantee the new debtor, and meanwhile to continue his former guarantee. The surety died without having given the new guarantee. *Held*, that the former debt having been extinguished by the release, the remedy against the deceased was gone. Novation of debt operates as a complete release of the original debtor, and cannot be construed merely as an agreement not to sue him.—*Commercial Bank of Tasmania v. Jones*, L.R. [1893] A.C. 313; 68 L.T. 776.

Railway :—

- (iii.) **Q. B. D.—Compensation—Injuriously affecting Land—Compensation once Awarded—Further Inquiry.**—In 1869 the lessee of a house situated close to the defendants' railway was compensated in respect of the working as well as of the construction of the railway. In 1883, the defendants made a ventilator close to the house to ventilate their underground station, and in 1889 they greatly enlarged the ventilator, thereby causing a serious injury and nuisance to the house, of which the plaintiff had become tenant in 1884. No part of the plaintiff's land was taken by the defendants. *Held*, that, although compensation had been already awarded in respect of the construction and working of the railway, the plaintiff was entitled to further compensation for the nuisance caused by the ventilator, which was not one of the ordinary effects of the working of the railway.—*Attorney-General v. Metropolitan Railway Co.*, 62 L.J. Q.B. 453; 69 L.T. 17.
- (iv.) **Q. B. D.—Passenger—Imprisonment—Ticket—Railways Regulation Act, 1889, s. 5, sub-s. 2.**—The servants of a railway company are not justified in detaining a passenger who has failed to produce his ticket, but has given a name and address, pending inquiry whether the name and address so given are correct, the name and address turning out on inquiry to have been in fact correctly given.—*Knights v. L.C. & D.R.*, 62 L.J. Q.B. 378.

Registration :—

- (v.) **Q. B. D.—Lodger Franchise—Servant.**—A., an assistant to a wine merchant at weekly wages resided on his employer's premises, occupying a room for which he paid a rent of 5s. a week, and having the sole use of it during the qualifying period. *Held*, that he was duly qualified as a lodger voter.—*Bennett v. Evans*, 68 L.T. 765.

River :—

- (vi.) **H. L.—Pollution—Rights of Riparian Owner.**—A riparian owner who has a prescriptive right to take, in a particular way and at a particular

place, water from a river, and to return the same to the river in a polluted condition, is not entitled to take the water in any other way or at any other place, nor to use his common law right of taking water in such a way as to add to the pollution of the stream.—*McIntyre Brothers v. McGavin*, L.R. [1893] A.C. 268.

Sale of Goods:—

- (i.) **C. A.**—*Possession under Hire and Purchase Agreement—Sale—Factors Act*, 1889, ss. 2, 9.—L., being in possession of furniture under a hire and purchase agreement made with the plaintiff, sold the same, before the last payment had accrued due or been paid, to the defendant, who received it in good faith, and without notice that the plaintiff had any right in respect of it. *Held*, that the sale and delivery to the defendant was valid, being protected by sect. 9 of the Act.—*Lee v. Butler*, L.R. [1893] 2 Q.B. 318.

Scottish Law:—

- (ii.) **H. L.**—*Church—Contract—Minister's Stipend*.—By decree of the Teind Court, in 1741, obtained at the instance of the baron baillie and certain feuars of the burgh of Greenock, for themselves and in the name of its whole inhabitants, the burgh was erected into a new parish. The sum of £1,000 had been subscribed and invested for the purpose of building a kirk, and endowing the minister with a competent stipend of not less than 950 merks; and the pursuers had undertaken to contribute certain yearly sums for fifteen years to complete a fund for the stipend. These facts were set out in the summons, but were not referred to in the conclusions of the summons or in the decree, which simply ordered the baillie, feuars, and inhabitants of the burgh to provide the minister of the new kirk with a competent legal stipend of not less than 950 merks. *Held*, that the decree imposed a direct liability upon the burgh of Greenock to pay the minister a competent and legal stipend according to the varying circumstances from time to time, and that a minimum payment of 950 merks would not satisfy the liability; nor was the obligation impaired by any loss of the funds or deficiency in the expected contributions.—*Provost, &c., of Greenock v. Peters* L.R. [1893] A.C. 258.
- (iii.) **H. L.**—*Conveyance—Construction—Dispositive Clause—Subsidiary Clauses*.—In 1796, the then owner of the barony of which the lands of H., L., and B. formed part, disposed of the *dominium utile* of those lands to A., reserving the coals. In 1808, B. acquired the superiority of these lands and the reserved coals. In 1837, B.'s trustee in bankruptcy, on the narrative that he had offered for sale "the superiorities and feu duties" of these lands, conveyed by the dispositive clause to A., the owner of the *dominium utile*, "all and whole the town and lands of H., with mosses, muirs, and all and singular pertinents, used and wont, pertaining and belonging thereto, all as at present possessed by the said" A. L. and B. were conveyed by similar words. In 1860, the said trustee in bankruptcy sold to X. the barony with the coals. *Held*, that the estate of coal was not conveyed by the deed of 1837, the narrative clause shewing that the words "all and whole the lands" were meant to apply to the vassal's estate, and not to land and minerals belonging in fee to the superior.—*Orr v. Mitchell*, L.R. [1893] A.C. 238.

Settled Estate:—

- (iv.) **Ch. D.**—*Settled Estates Act*, 1877, s. 38—*Contrary Intention—Direction not to Sell Minerals*.—P., who died in 1881, devised all his real estate to trustees upon trust to sell and to stand possessed of the proceeds upon

trust for his wife and children; and the will contained the following words, "Now I hereby express my will to be, that the trusts for sale contained in my said will shall not be exercised in so far as they relate to my said mineral lands and estate until after the decease of the survivor of my present sons and daughters." *Held*, that these words did not amount to an express declaration that the power of the Act should not be exercised by the Court, and that the Court had power to order a sale of certain parts of the estate without reservation of minerals, which it had become impossible to work.—*In re Peake's Settled Estates*, 69 L.T. 281.

- (i.) **Ch. D.—Tenant for Life—Lease to Wife—Right of Way—Validity—Best Rent—Settled Land Act, 1882, ss. 6, 7, 8, 13, 15, 53, 54—Settled Land Act, 1890, ss. 7, 10—Defective Exercise of Power—12 & 13 Vict., c. 26.**—The tenant for life of a settled estate, with the object of giving his wife a dower house on the property, granted her a lease for twenty-one years, at a rent of £250, of a house, part of the estate, near the mansion-house, with the furniture therein, and some land adjoining, with a right of way over all the roads and drives which might exist on the estate. He also granted her a building lease of a piece of land close to such house. It was arranged that the leases should be renewed from time to time, so that the terms should begin to run as nearly as possible from the death of the tenant for life. No effectual possession was taken by the lessee. The rent of £250 was a fair rent for the house, irrespective of the furniture and of the right to use the drives, which right would seriously interfere with the amenities of the estate. *Held* (1) that the leases were bad because the lessor had not regarded the interests of all parties interested under the settlement; (2) that the grant of the right to use the drives occupied with the mansion-house was bad, as the lease had not been made with the consent of the trustees, or under an order of Court, and that the defect was not cured by 12 & 13 Vict., c. 26; (3) that the plaintiff, the lessee, having been party to the transaction was not protected as a person dealing in good faith with the tenant for life; (4) that, as there had been no real bargaining between the parties as to the rent on either the granting or the renewal of the leases, they could not be upheld on that ground.—*Sutherland v. Sutherland*, 69 L.T. 186.

Sheriff.—See Bankruptcy, p. 2, v. Practice, p. 19, vii.

Ship:—

- (ii.) **C. A.—Charter-party—Breach—Condition or Warranty—Waiver.**—A charter-party, dated March 29th, between the plaintiff, a shipowner, and the defendants, described the ship as "now sailed or about to sail" from a pitch pine port to the United Kingdom, and provided that after discharging she should go to Quebec, and there load a cargo. At the date of the charter-party the ship was, as the parties knew, at Mobile. She did not sail till April 23rd. On May 16th the defendants knew of the date of sailing, and asked the plaintiff if he had any proposal to make. He made none and a correspondence ensued, and, finally, on June 16th, the defendants wrote: "If you send the ship to load under our charter-party we shall protest against loading and difference of freight and insurance upon goods then shipped." The defendants refused to load the ship at Quebec. *Held*, that the description of the ship as "sailed or about to sail," was of the essence of the contract; that it was a condition precedent, and not a mere warranty; and that on breach of the condition the defendants might have repudiated the contract. But, *held*, that they had waived their right to repudiate, and were liable for the freight, but were entitled to

such damages as they could prove that they had sustained by reason of the breach of the condition.—*Bentsen v. Taylor, Sons & Co. (No. 2)*, L.R. [1893] 2 Q.B. 274.

- (i.) **H. L.**—*Bill of Lading—Voyage—Deviation*.—Decision of C. A. (see Vol. 17, p. 106, i.) affirmed.—*Glynn v. Margetson*, 62 L.J. Q.B. 466; 69 L.T. 1.
- (ii.) **P. D.**—*Collision—Overtaking Ship—Regulations Arts. 16, 20*.—The obligation on an overtaking ship to keep out of the way, continues, although she has ceased to be within the area lighted by the stern-light of the overtaken ship, and has advanced into a position in which she can see her side-light.—*The Molière*, L.R. [1893] P. 217; 69 L.T. 263.
- (iii.) **P. D.**—*Costs—County Court Costs—High Court—County Courts Admiralty Jurisdiction Act, 1868, s. 3*.—Whether successful plaintiffs, who have instituted a collision action in the High Court, and recover less than £300, will be allowed costs, depends on the circumstances of the case, and they will be entitled to costs if the Court considers that under the circumstances they have acted reasonably in instituting the action in the High Court.—*The Saltburn*, 69 L.T. 88.
- (iv.) **P. D.**—*Insurance—Collision Clause—"Sunken Wreck"*.—By a policy of re-insurance on a ship the risk covered was "loss or damage through collision with (*inter alia*) any sunken wreck." On entering port the ship ran aground, and was found to be resting on the wreck of a ship which had sunk more than a year before, and whose ribs projected about a foot above the sand. She afterwards shifted her position about her own length off the wreck and on to a bank of iron ore, which had formed part of the sunken ship's cargo. *Held*, that both the damage through contact with the wreck, and that through contact with the iron ore, was covered by the policy.—*The Munroe*, L.R. [1893] P. 248.
- (v.) **P. D.**—*Insurance—Free from Particular Average unless the Ship be Stranded—Cargo not on Board at time of Stranding*.—An insurance was effected with the defendant on a parcel of rice on a voyage from C. to B. on a named French ship. The rice was "warranted free from particular average unless the ship be stranded." The ship with the rice on board met with bad weather and some of the rice was jettisoned. She put into M. for repairs. The cargo was landed, and some of it, including part of the rice, was condemned and sold. While the cargo was on shore the ship was stranded in a cyclone, and was abandoned. The cargo was shipped on a British ship, and after part of it, including some of the rice, had been damaged by sea perils was landed at B. Freight had been paid, according to French law, *pro rata itineris* on all the rice discharged from the French ship at M. The insurer paid their proportion of general average and forwarding charges, but disputed the claim of the insured for a particular average loss on the rice sold at M., and on that subsequently damaged in the British ship, including the *pro rata* freight paid on the rice. *Held*, that the insurers were not liable, as the stranding took place when the insured goods were not on board the ship, and consequently the warranty against particular average remained in force.—*The Alsace Lorraine*, L.R. [1893] P. 209; 69 L.T. 261.
- (vi.) **P. D.**—*Limitation of Liability—Ships belonging to Same Owner—Common Employment—Gross and Register Tonnage—Merchant Shipping Acts, 1854, ss. 21, 22, 23; 1862, s. 54; 1867, s. 9; 1889, s. 1*.—Two steamers belonging to the same owner came into collision, and one of them sank with the effects of the crew. In an action for limitation of liability, *held*, that the crews of the two vessels, one of which had

been pronounced to blame, were not in common employment, and that the crew of the sunken vessel were entitled to claim for their loss. *Held*, also, that in computing liability the crew space might be deducted.—*The Petrel*, 62 L.J. P. 92.

Solicitor:—

- (i.) **H. L.—Costs—Scale Fee—Lease—Preparation of—Negotiation—General Order**, 1881, *Sched. I., Part II.*—When the lessor's solicitor charges the scale fee "for preparing, settling, and completing lease and counterpart," he cannot in addition charge for the negotiations which led up to, and the agreement which preceded the lease.—*Savery v. Enfield Local Board*, L.R. [1893] A.C. 218; 62 L.J. Ch. 674; 68 L.T. 722.
- (ii.) **C. A.—Costs—Taxation—Series of Bills—Payment.**—Where a solicitor is conducting litigation, other than a common law action, which may extend over a considerable time, and in which breaks may occur of such a kind as to be equivalent to the conclusions of definite and distinct parts of the proceedings, he may deliver and demand payment of his bill of costs up to the occurrence of any such breaks. But where he has, in the course of the proceedings, delivered several bills of costs, it is a question of fact whether they were sent in as final bills up to the occurrence of any such break, so as to be separate bills, and therefore not liable to taxation after twelve months, or whether they were merely portions of an entire bill, so as to be liable to taxation until twelve months after delivery of the last. *Semble*, that the making of an award and its remission for reconsideration may be treated as such breaks in protracted arbitration proceedings. The handing to the solicitor by his client of a negotiable security for the amount of his bill, coupled with the giving of a receipt by the solicitor, which expresses it to be taken "in settlement" of the bill, does not amount to payment if the security is dishonoured, unless the solicitor can prove that such was the intention of the parties, and that the client was aware of the effect of the transaction upon his right to tax the bill.—*In re Romer and Haslam*, L.R. [1893] 2 Q.B. 286.
- (iii.) **Q. B. D.—Striking Off Rolls—Criminal Conviction.**—A solicitor was convicted of being "wilfully a party to the continued use as a brothel of premises" of which he was landlord. *Held*, that, though no misconduct as regards his professional duties was alleged, the Court had jurisdiction to deal with the case by striking him off the rolls; and that, although the mere conviction of a criminal offence is not of itself necessarily sufficient to justify striking a solicitor off the rolls, yet the particular offence was of such a disgraceful character that he ought to be struck off.—*E. p. Incorporated Law Society; in re a Solicitor*, 69 L.T. 148.
- (iv.) **Q. B. D.—Unqualified Person Practising—County Court Judge—Power to Commit—Solicitors Act, 1843, ss. 2, 35, 36—Solicitors Act, 1860, s. 26—County Courts Act, 1846, s. 113—County Courts Act, 1888, s. 162.**—A county court judge has no jurisdiction to commit for contempt a person who has acted as a solicitor in an action in the county court without qualification.—*Reg. v. Brompton County Court Judge*, L.R. [1893] 2 Q.B. 195; 68 L.T. 829; 41 W.R. 648.

Tenants in Common:—

- (v.) **Ch. D.—Expenditure in Improvements—Contribution.**—The owner of one moiety of a property, who was also tenant for life of the whole, borrowed money on mortgage, which was with other moneys spent in permanent improvements on the property. After the death of the tenant for life, *held*, that the present value of the improvements, but

not exceeding the sum so borrowed on mortgage, must be borne rateably by the owners of both moieties.—*Farrington v. Forrester*, L.R. [1893] 2 Ch. 461; 69 L.T. 45.

Tenant in Tail:—

- (i.) **C. A.**—*Disentailing Deed—Estates in Defeasance of Estate Tail—Fines and Recoveries Act, 1833, s. 15.*—Lands were devised, subject to a life estate, upon trust for B., the second son of A., for life, with remainder to his first and other sons in tail male, with similar remainders to the third and other sons of A. and their sons. There was a proviso that on the happening of a given event, the trusts in favour of B. and his issue male should “be postponed to and take effect in remainder next immediately after the trusts in favour of the other sons of A., and their issue male.” In 1872 B. and his eldest son, with the consent of the tenant for life, disentailed the lands, and conveyed them in fee. In 1883 the given event happened. In 1891 the tenant for life died. *Held*, that the estate of the third son of A. and his issue male was an estate which would have taken effect in defeasance of the estate tail in respect of which the disentailing deed had been executed, and was therefore barred.—*Milbank v. Vane*, 62 L.J. Ch. 629; 68 L.T. 735.

Tithe:—

- (ii.) **Q. B. D.**—*Extraordinary Tithe—Divided Ownership—Remedy of Owner paying whole Tithe—Commutation of Tithes Amendment Act, 1842, s. 16—Extraordinary Tithe Redemption Act, 1886, s. 4, sub-s. 5, s. 9.*—Where the rent-charge in lieu of extraordinary tithe has been assessed on a farm, and the ownership of the farm has subsequently become divided, the owner of the portion who has paid the whole tithe cannot bring an action for contribution against the owner of the other portion, but must apply to the justices under sect. 16 of the Act of 1842.—*Simmonds v. Heath*, 62 L.J. Q.B. 445.
- (iii.) **Q. B. D.**—*Tithe Act, 1891, s. 2, sub-s. 6—Liability of Occupier under Contract made before Act—Omission of Landowner to serve Notice—Application for Certificate.*—Where a landowner has omitted to serve on the tithe-owner an occupier's liability notice, and applies to the county court for a certificate that there was good and sufficient cause for his failure to do so, and that the occupier has not been prejudiced thereby, it is not necessary to shew the liability of the occupier to pay the tithe rent-charge under a contract made before the passing of the Act.—*Hughes v. Rimmer*, L.R. [1893] 2 Q.B. 314.

Tort:—

- (iv.) **C. A.**—*Actionable Wrong—Maliciously Conspiring to Procure Breach of Contract.*—The defendants, being officers and members of certain trade unions connected with the building trade, with the view of coercing a firm of builders to observe certain rules made by the unions, endeavoured to induce other persons, including the plaintiff, to refuse to supply the firm with materials. The plaintiff, who supplied the firm with building materials, refused to cease to do so, and the defendants induced other persons, who, as the defendants knew, had contracts with the plaintiff, not to perform such contracts, and also induced such persons and others not to deal with the plaintiff, by threatening to withdraw the union workmen who were employed by them. The plaintiff thereby suffered damages. *Held*, that he was entitled to recover damages from the defendants for maliciously inducing persons to break their contracts with him, and for maliciously

conspiring to induce persons not to enter into contracts with him, whereby he had suffered damage.—*Temperton v. Russell* (No. 2) 62 L.J. Q.B. 412; 69 L.T. 78.

See Bill of Sale, p. 3, iii.

Trade Mark:—

- (i.) **C. A.—Old Mark—User—Persons Aggrieved—Patents, &c., Act, 1883, ss. 64, 90.**—The words "Yorkshire Relish" were registered by P. as a trade mark for sauces, he claiming to have used them before 1875. He sued the B. company, who sold a sauce called "London Relish," to restrain them from using a label colourably resembling his label, but did not complain of their violating his registered mark. The B. company moved to expunge P.'s mark from the register, complaining that it embarrassed them in their trade, and that the words had not been used as a trade mark before 1875. P. produced evidence that he had packed his bottles in cases on which the words "Yorkshire Relish," without any other device, were stencilled; and that the words were recognised as denoting his sauce and no other. He had other registered marks, containing those words and a device. *Held*, that P. had not used the words as a trade mark before 1875, that the B. company were "persons aggrieved," though no proceedings had actually been taken against them for violating P.'s mark, and that P.'s mark must be expunged.—*In re Powell's Trade Mark*, L.R. [1893] 2 Ch. 388; 69 L.T. 60; 41 W.R. 627.
 - (ii.) **C. A.—User of Distinctive Words by Another Person at time of Registration—Motion to Expunge—Injunction—Patents, &c., Act, 1883, s. 90.**—In 1879 and 1886 the plaintiff, who brewed beer mainly for export, registered trade marks, the distinctive parts of which were the words, "John Bull Brand." In 1879, L. & Co., a Sheffield firm, were selling "John Bull" beer, but their trade was purely local, and the plaintiff did not know of it. In 1890, this firm abandoned the use of the words "John Bull." In 1884, the defendant, who brewed for the home trade, began to sell beer under a mark containing the words "John Bull." The plaintiff applied for an injunction, and the defendant moved to expunge the plaintiff's mark. *Held*, that though L. & Co. could have opposed the registration of the plaintiff's mark, no one else could do so; and that as L. & Co. had not opposed, and had abandoned the use of the words "John Bull," the Court ought not to interfere with the plaintiff's mark, which was not of such a nature as to be incapable of registration. *Held*, also, that the plaintiff was entitled to the injunction asked for.—*Paine & Co. v. Daniells & Sons' Breweries*, L.R. [1893] 2 Ch. 567; 62 L.J. Ch. 732; 68 L.T. 801.
- Trustee:—**
- (iii.) **Ch. D.—Appointment of New Trustee—Trustee predeceasing Testator.**—The personal representatives of the survivor of two trustees nominated by a will, but dying before the testator, cannot under sect. 31 of the Conveyancing Act, 1881, appoint new trustees of the will.—*Nicholson v. Field*, L.R. [1893] 2 Ch. 511.
 - (iv.) **Ch. D.—Appointment of—Form of Order.**—An order appointing new trustees of a will should go on to direct them to transfer into their own names a sum of consols, part of the trust funds.—*In re Jolliffe's Trusts*, 68 L.T. 747.
 - (v.) **H. L.—Inquiry by Incumbrancer—Notice.**—Decision of C. A. (see Vol. 17, p. 68, ii.) affirmed.—*Ward v. Duncombe*, 69 L.T. 121.

- (i.) **C. A.—Vesting Order—Form of.**—The common form of vesting order as to stock or shares upon the appointment of new trustees by the Court need not be departed from where it is intended to be the effect that the trustees shall hold the stock or shares themselves. When the trustees do not desire to become shareholders and expose themselves to liability in respect of shares not fully paid, an order may be made that the right to call for a transfer of, and to transfer, and to receive dividends on, the stock or shares, should vest in the new trustees, without directing them to transfer the same into their own names—*In re Gregson*, 62 L.J. Ch. 764; 69 L.T. 73; 41 W.R. 641.
- (ii.) **C. A.—Solicitor—Power to Charge for Services and Trouble—Settlement of Accounts between Trustees.**—A testator appointed A. and B. executors and trustees, bequeathing to B., if he should accept the office, a legacy of £200, and declaring that B., and any future trustee who should be a solicitor, should be entitled to receive out of the estate his charges for work done, including business not strictly professional, but which might or would have been done in person by a trustee not a solicitor. B. charged the estate with considerable sums for business done by him, including charges for his trouble in matters not strictly professional. *Held*, that he was entitled to such charges, although a legacy had been given to him in his capacity of trustee. *Held*, also, that in the absence of special powers in the will, trustees cannot settle the amount payable out of the estate to one of themselves, so as to bind the *cestuis que trust*, and that the residuary legatees were entitled to have B.'s charges investigated.—*Bennett v. Bennett*, L.R. [1893] 2 Ch. 413; *Fish v. Bennett*, 69 L.T. 233.

Vendor and Purchaser:—

- (iii.) **Ch. D.—Building Land—Restrictive Covenants—Hoarding—Breach of Covenant.**—A. conveyed two pieces of land to B. in fee, and B. covenanted with A., his heirs and assigns, that any buildings to be erected on the land should be of a specified nature, and should be used only as dwelling-houses. A. had bought land and houses adjoining, and had entered into similar covenants. A. died, having devised his land and houses to X. B.'s land was surrounded by a wooden fence. The defendants, who were negotiating for a lease of B.'s land, pulled down the fence and erected a lofty advertisement hoarding. *Held*, that X. took as assignee of A., and was entitled to sue upon the covenant; that the property was a residential property; that the covenant was a reasonable one as a protection to residents in the neighbourhood; that the hoarding was not a "building" within the terms of the covenant; and that the defendants had not committed a breach of the covenant.—*Foster v. Fraser*, 69 L.T. 136.
- (iv.) **Ch. D.—Building Scheme—Representation by Plans—Rights and Obligations of Purchasers.**—In 1875, 1882, and 1883 portions of a building estate were put up for sale. Plans were put forth on each occasion shewing that it was intended as a residential estate, and marking a certain plot as the site for a "lodge" at the end of a private road through the estate. In 1885 the defendant bought part of the estate then unsold, including the site marked "lodge" in the plans. He had notice of the plans. *Held*, that purchasers of other parts, were entitled to restrain him from using such site for any purpose inconsistent with the scheme disclosed by the three estate plans.—*Tindall v. Castle*, 62 L.J. Ch. 555.
- (v.) **Ch. D.—Covenant for Further Assurance—Mortgage Undisclosed—Right of Purchaser to Indemnity.**—The owner of an estate mortgaged it, and afterwards sold an undivided moiety. The mortgage was not mentioned in the conveyance, which contained a covenant for further

assurance. The two moieties devolved upon different persons. *Held*, that as between the owners of the two moieties, the unsold moiety must bear the mortgage debt.—*Farrington v. Forrester*, L.R. [1893] 2 Ch. 46; 69 L.T. 45.

- (i.) **C. A. & Ch. D.**—*Delay in Completion—Wilful Default of Vendor—Execution by Attorney of Trustee—Production of Deed by Solicitor—Receipt for Purchase Money—Conveyancing Act, 1881, s. 56—Trustee Act, 1888, s. 2 (1).*—A contract for sale of land provided for payment of interest on the purchase money in case of delay in completion from any cause except wilful delay on the part of the vendors. The vendors were aware that a trustee mortgagee, whose concurrence in the conveyance was necessary, was abroad, but that he had left a power of attorney under which his attorney could execute the conveyance. The purchaser refused to accept a conveyance executed by the attorney, on the ground that he had notice of the trust, and that the receipt of the trustee for the mortgage money was necessary. Delay in completion was thereby caused. *Held*, that the person producing a deed containing a receipt for the purchase money must be the solicitor acting for the person signing the receipt, and that the attorney could not appoint a solicitor to act for the absent trustee so as to produce the deed signed by the attorney, and receive the purchase money, since that would be a double delegation of the powers of the trustee. And, that the delay was caused by the wilful default of the vendor.—*In re Hetling & Merton's Contract*, 62 L.J. Ch. 783; 68 L.T. 749; 69 L.T. 266.
- (ii.) **C. A.**—*Title—Objection—Reasonable.*—Land was leased by the freeholder to B. for twenty-one years from March, 1876, with the usual proviso for re-entry. The lease was deposited by B. with H. as security for a loan. In 1877 the land was conveyed to S., in fee simple subject to the lease. In 1890 an action in ejectment was commenced for non-payment of rent. B. did not appear, and S. obtained judgment, and took possession. The executors of H., who had died, were not parties to the action, and had no notice of it. B. did not repay the loan. In 1890, S. conveyed the land to W., who made no objection as to the deposited lease. In 1892 W. agreed to sell the land to T. free from incumbrances. T. required that the lease should be surrendered, or at least given up. W. could not accede to this, but offered to indemnify T. against any claim under the lease. *Held*, that this was not such a blot on the title as to make it a bad title, and that the vendor's offer of an indemnity was sufficient.—*In re Heaysman & Tweedy's Contract*, 69 L.T. 89.

Will:—

- (iii.) **C. A.**—*Construction—Annuity, Duration of—Gift of Income—Capital.*—The testator gave all his real and personal property to trustees "upon trust to pay out of the interest and rents arising from the same the following sums of money: I give to my wife £250 per annum; I give to H., or to his descendants £250 per annum." Then followed gifts of annual sums in similar terms. "With regard to the residue of the interest and rents after the above payments have been made I give" it to various charities in specified proportions. There was no express gift of capital. *Held*, by C. A., that the annuity to H. was for life only, with a substituted gift to his descendants. *Held*, by Ch. D., that the gift to charities included the capital.—*Morgan v. Morgan*, 62 L.J. Ch. 789.
- (iv.) **Ch. D.**—*Forfeiture—Assigning or Attempting to Assign.*—Under a will a tenant for life was to forfeit his interest if he assigned, charged, or incumbered it, or attempted to do so. He borrowed money, and gave the lender a document which was in form an equitable assignment of

part of his interest. No notice was given to the trustees, and the document was subsequently cancelled. It was proved that the parties did not intend the document to be a charge or assignment, and that it would have been a fraud on the bargain to have used it as such. *Held*, that evidence of the true meaning of the document was admissible, and that there was no forfeiture.—*Sheward v. Brown*, 41 W.R. 685.

- (i.) **Ch. D.**—*General Power of Appointment—Ineffectual Appointment—Residuary Bequest—Wills Act, s. 27.*—By a settlement, a general power of appointment over a fund was given to P., and it was provided that in default of appointment the fund should go to the next-of-kin of P. P., by his will, after appointing part of the fund, appointed the residue to X. and Y., on trust to convert and pay legacies, and to pay the ultimate residue to E., if she should be living at the death of C. E. survived P. but died before C. *Held*, that the ultimate residue of the fund went to P.'s residuary legatee.—*Thomas v. McKechnie*, 68 L.T. 816.
- (ii.) **Ch. D.**—*Remoteness—Trust for Sale after Perpetuity Limits.*—A trust or power for sale which is not limited to arise within the period allowed by the rule against perpetuities is invalid, although the proceeds are given upon trusts under which the property must vest within the period. An invalid trust for sale cannot effect a conversion.—*Goodier v. Edmunds*, 62 L.J. Ch. 649.
- (iii.) **P. D.**—*Probate—Cutting Will—Signature Legible.*—Scratching with a knife which is a lateral cutting, unless carried by the testator to the extent of rendering his signature illegible, does not amount to a revocation of the will.—*In the goods of Godfrey*, 69 L.T. 22.
- (iv.) **P. D.**—*Probate—Revocation—Two Wills.*—Where a first will deals with the whole property of the testator, and a second will, which does not in terms revoke the first will, does not deal with the whole property, and is itself revoked by mutilation, the first will remains intact, and is entitled to probate.—*In the goods of Hodgkinson*, 69 L.T. 150.
- (v.) **P. D.**—*Probate—Two Wills—Confirmation Clause—All Documents included in Probate.*—Where a testatrix, having property in England and also in Italy, made two wills, each dealing with the property in one country exclusively, and appointing separate sets of executors, but the Italian will, which was later in date, contained a clause confirming the English will; *held*, that this clause made it necessary that both wills should be included in the English probate, which was granted to the English executors.—*In the goods of Lockhart*, 69 L.T. 21.
- (vi.) **P. D.**—*Probate—Two Documents—One Unexecuted.*—A testatrix left an unexecuted testamentary document, making various bequests, and appointing T. executor. She also left an executed testamentary document of later date, by which she bequeathed all her property to M. "for the purposes I require him to do absolutely." *Held*, that the documents could not be admitted to probate as together constituting the will, but that probate might be granted of the second document, with directions to the executor to administer the estate in conformity with the trusts of the first document.—*In the goods of Marchant*, L.R. [1893] P. 254.

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Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR NOVEMBER, DECEMBER, 1893, AND JANUARY, 1894.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration :—

- (i.) **C. A.**—*Scotch Judgment—Limitations—Debt Barred in England.*—An administration suit was commenced while a Scotch action was pending against the administratrix on account of a debt which was statute-barred in England. Judgment by default was given in Scotland. The Scotch creditor's claim was disallowed by the chief clerk on the ground of the Statute of Limitations. The administratrix procured the judgment by default to be recalled, and defended the action on the merits. Judgment was given against her, and was registered in England under the Judgment Extension Act, 1868. *Held*, that the Scotch creditor was entitled to the fruits of his judgment when obtained and registered in England, whether or not he would have been restrained from proceeding with the Scotch action after carrying in a proof in the English proceedings, and that he must be admitted a creditor against the assets undistributed. *Held*, also that there was no need to vary the chief clerk's certificate, as the judgment created a new cause of action distinct from the debt upon which the chief clerk had adjudicated.—*Bland v. Low*, 63 L.J. Ch. 60.

Adulteration :—

- (ii.) **Q. B. D.**—*Food—Disclosure of Alteration—Foods and Drugs Act, 1875, ss. 6, 7, 9.*—A tin of skimmed milk was sold, which was labelled "Condensed Milk." On another part of the label it was stated in smaller print, "This tin contains skimmed milk." *Held*, that the label was a sufficient disclosure of the contents of the tin within the meaning of sect. 9 of the Act.—*Jones v. Davies*, 69 L.T. 497.

- (i.) **Q. B. D.**—*Food*—"Written Warranty"—*Food and Drugs Act, 1875, s. 25.*—In order to constitute the statutable defence of a "written warranty," it is not necessary that word "warrant" or "warranty" should be used in the document relied on; it is sufficient if the document amounts to a warranty in law.—*Laidlaw v. Wilson, L.R. [1894] 1 Q.B. 74; 42 W.R. 78.*

Appeal:—

- (ii.) **H. T.**—*Question of Law not raised on Record.*—In a Scotch appeal the House of Lords refused to allow the appellant to argue a question of law which was not raised on the record, the appellant having refused to amend his record when given the opportunity in the Court of Session.—*Rixon v. Edinburgh Northern Tramway Co., L.R. [1893] A.C. 686.*

Arbitration:—

- (iii.) **C. A.**—*Reference of Disputes under Agreement—Power to Construe Agreement—Effect of Award—Subsequent Action.*—The parties had agreed that the plaintiff should supply coal screenings to the defendant. Disputes arose, and were referred to arbitration, with power for the arbitrator to determine the construction of the agreement. The arbitrator awarded that the defendant was bound to keep his works going to receive the screenings, and awarded damages to each party for breaches of the agreement, and found that the disputes had arisen through the wrongful refusal of the defendant to keep his works going. The plaintiff afterwards sued the defendant for refusing to keep his works going, and to receive the screenings. *Held*, that the arbitrator's finding was conclusive in the action as to the construction of the agreement. *Held*, also, that the arbitration and award were no bar to the action, as there had been no renunciation by the defendant of the agreement, treated as a renunciation by the plaintiff, entitling the arbitrator to assess damages on the footing of a rescission of the agreement.—*Gueret v. Andouy, 62 L.J. Q.B. 683.*
- (iv.) **Ch. D.**—*Partnership—Action for Dissolution—Return of Premium—Stay of Proceedings—Arbitration Act, 1889, s. 4—Partnership Act, 1890, s. 40.*—In an action for dissolution of partnership the plaintiff claimed the return of his premium. The articles provided for the reference to arbitration of any difference in regard to any matter or thing relating to the partnership or the affairs thereof. The defendant moved to stay proceedings, and to refer the matter to arbitration. *Held*, that under the arbitration clause the arbitrator would have jurisdiction to award a dissolution of the partnership, and the terms on which it should take place, and as one of those terms to award the return of the premium, or part of it; and therefore that the action should be stayed.—*Belfield v. Bourne, 42 W.R. 189.*
- (v.) **Ch. D.**—*Staying Proceedings—"Step in Proceedings"—Arbitration Act, 1889, s. 4.*—A "step in the proceedings," which precludes the party taking it from applying for a stay of proceedings, must be some application to the Court by summons or motion, and does not include an application by letter or notice by one party to the other, or by correspondence between their solicitors, such as a notice given by the defendant that he requires delivery of a statement of claim.—*Ives and Barker v. Williams, L.R. [1894] 1 Ch. 68; 69 L.T. 710.*

Attachment:—

- (vi.) **P. D.**—*Order to Secure Costs—Undischarged Bankrupt—Weekly Salary—Means.*—The fact that a person is an undischarged bankrupt does not, *per se*, preclude him from being attached for non-compliance with an

order to pay or secure costs. Therefore, where the respondent, an actor, earning a large weekly salary, and an undischarged bankrupt, failed to comply with an order to lodge in Court a sum of £40, or to give a bond with two sureties in the penal sum of £80, to meet the estimated costs of the petitioner, the Court, being satisfied that he could comply with the order, ordered an attachment to issue against him.—*Shine v. Shine*, L.R. [1893] P. 289; 69 L.T. 500.

Bailment:—

- (i.) **Q. B. D.**—*Restaurant Keeper—Customer's Coat.*—A person entered a restaurant to dine. A waiter hung up his coat on a hook without being asked to do so, and it was stolen. He sued the restaurant keeper for damages for the loss of the coat. *Held*, that there was evidence to warrant a verdict for the plaintiff on the ground of negligence on the part of the defendant.—*Utzon v. Nicols*, L.R. [1894] 1 Q.B. 92.

Banker:—

- (ii.) **Ch. D.**—*Death of Partner in Bank—Depositors—Liability to—Novation.*—The acceptance by a customer, from a surviving partner in a bank, of a fresh deposit note for the balance of a deposit made with the bank, one of the partners in which is dead, is not sufficient evidence of novation to discharge the estate of the deceased partner.—*Head v. Head*, L.R. [1893] 3 Ch. D. 426; 63 L.J. Ch. 34.

Bankruptcy:—

- (iii.) **C. A.**—*Act of Bankruptcy—Bankruptcy Notice—Firm—Infant Partner—Bankruptcy Act, 1883, ss. 4, 5, 6, 9, 110, 115—Bankruptcy Rules, 1886, rr. 260, 262, 264.*—A receiving order was made against the partners in a firm, one of whom was an infant. The act of bankruptcy was the non-compliance with a bankruptcy notice which had been served upon the firm after final judgment had been recovered against the firm under the firm name. *Held*, that the receiving order was bad. If one of the partners in a firm is a person upon whom no valid bankruptcy notice can be served, a receiving order cannot be made against all the partners by serving a bankruptcy notice on the firm.—*E. p. Beauchamp; in re Beauchamp Brothers*, L.R. [1894] 1 Q.B. 1; 69 L.T. 646; 42 W.R. 110.
- (iv.) **C. A.**—*Appeal—Practice—Copy of Notice of Appeal to Registrar—Bankruptcy Rules, r. 132.*—It is a condition precedent to the hearing of an appeal in bankruptcy that a copy of the notice of appeal should be sent to the registrar of the Court appealed from.—*E. p. Vitoria; in re Vitoria*, 42 W.R. 193.
- (v.) **Q. B. D.**—*Fraudulent Preference—Payment after Petition—Protected Transaction—Bankruptcy Act, 1883, ss. 48, 49.*—A payment by a debtor to a creditor after the presentation of a petition against the debtor is not a fraudulent preference, but it may be avoided as being contrary to the policy of the bankruptcy laws. Where the payment is of this nature it will not be protected as a payment made to a creditor who has no knowledge of an act of bankruptcy.—*E. p. The Trustee; in re Badham*, 69 L.T. 356.
- (vi.) **Q. B. D.**—*Proof—Alimony—Arrears.*—Arrears of alimony payable by a debtor to his wife under an order of the Probate Division, which became due after a receiving order had been made against the debtor, cannot be proved for in the bankruptcy.—*E. p. Hawkins; in re Hawkins*, L.R. [1894] 1 Q.B. 25; 42 W.R. 202.

- (i.) **Q. B. D.**—*Proof—Interest on Mortgage—Transfer of Estates of Mortgagor and Mortgagees—Arrears of Interest.*—A mortgagor assigned his equity of redemption, and the estate of the two mortgagees was transferred so that it vested in one of them alone. The assignee of the equity of redemption paid interest on the mortgage, and when sued for arrears suffered judgment by default. He became bankrupt, and the transferee of the mortgage sought to prove for further arrears. *Held*, that he could not do so as there was no privity of contract between him and the assignee of the equity of redemption, and no personal liability on the part of the latter to pay interest.—*E. p. Mason; in re Errington*, L.R. [1894] 1 Q.B. 11.
- (ii.) **C. A.**—*Proof—Loan to Trader—Interest varying with Profit—New Agreement—Partnership Act, 1890, ss. 2, 3.*—Decision of Q. B. D. (*see* Vol. 19, p. 2, iv.) reversed.—*E. p. The Trustee; in re Hildesheim*, L.R. [1898] 2 Q.B. 357; 69 L.T. 550; 42 W.R. 138.
- (iii.) **Q. B. D.**—*Proof—Interest—Bankruptcy Act, 1890, s. 23.*—Where the debt for which a creditor seeks to prove consists of a principal sum and interest at a rate exceeding five per cent., he may allocate any security which he may hold to the payment of the interest, or any part thereof, and prove for any principal sum remaining over.—*E. p. Discount Banking Co.; in re Fox and Jacobs*, 69 L.T. 657.
- (iv.) **C. A.**—*Security for Costs—Foreign Creditor—Appeal by.*—In bankruptcy proceedings governed by the Act of 1869 and the rules made under it, where a foreign creditor resident abroad appeals against the rejection of his proof by the trustee, the Court ought not, as a matter of course, to exercise its discretion by ordering the creditor to give security for costs. The order ought only to be made in peculiar or extreme cases.—*E. p. Paget; in re Semenza*, L.R. [1894] 1 Q.B. 15; 69 L.T. 708.
- (v.) **Q. B. D.**—*Small Bankruptcy—Summary Administration—Other Remedy against Debtor—Bankruptcy Act, 1883, s. 122, sub-s. 5.*—Where an order has been made for summary administration of a debtor's estate the county court has no power to give leave to the creditor to issue execution against the debtor's property.—*In re Frank*, L.R. [1894] 1 Q.B. 9.
- (vi.) **C. A.**—*Trustee's Accounts—Deed of Arrangement—Prior to 1890—Bankruptcy Act, 1890, s. 25, sub-s. 2 (b)—Deeds of Arrangement Rules, 1890, rr. 7, 16, forms 2, 3, 6.*—The trustee of a deed of arrangement dated prior to January 1st, 1891, is not required to send to the Board of Trade an account of his receipts and payments as such trustee prior to that date. *Quære*, whether he is required to send in any account at all of his receipts and payments.—*E. p. Board of Trade; in re Norman*, L.R. [1893] 2 Q.B. 369; 63 L.J. Q.B. 84; 69 L.T. 675.
- See Landlord and Tenant, p. 47, ii.*

Bill of Sale:—

- (vii.) **Ch. D.**—*Charge on Machinery—Tenant's Fixtures—Interest in Land—Statute of Frauds.*—A dock company obtained an advance from a bank to enable them to purchase machinery, which was to be assigned as security for the advance, but no assignment was made. The machinery was let to a seed company with an option of purchase, and the dock company gave the bank a document whereby they undertook to hand over to the bank the payments made for the machinery. Certain payments were accordingly handed over to the bank until the failure of the seed company. The bank obtained an advance from P. on the security of a memorandum of charge not sufficient to satisfy the Statute of Frauds, and not registered as a bill of sale. A decree was made for accounts of the property of the bank on the death of one of

the partners, and a receiver was appointed. The dock company owed the bank a large sum, and paid the receiver a considerable sum as interest. *Held*, that P. was not entitled to the sum so paid as interest, as the machinery was an interest in land within the Statute of Frauds, so far as it consisted of tenant's fixtures, and was within the Bills of Sale Acts so far as it consisted of personal chattels, so that P. had not obtained a valid charge upon it.—*Jarvis v. Jarvis*, 68 L.J. Ch. 10; 69 L.T. 412.

- (i.) **C. A.**—*Receipt from Sheriff—Assurance—Bills of Sale Acts*, 1878, s. 4; 1882.—Decision of Q. B. D. (*see* Vol. 18, p. 110, v.) affirmed.—*E. p. Burgess; in re Hood*, 42 W.R. 28.

Building Society:—

- (ii.) **Q. B. D.**—*Alteration of Rules—Registration—Retrospective—Building Societies Act*, 1874, ss. 14, 18, 32.—A building society altered its rules so as to apply certain regulations which were then made to all withdrawals of which notice had been given before the date of the resolution altering the rules; one of the regulations provided that in case of the dissolution of the society, withdrawing members whose notices had expired should lose their priority. The registrar refused to register the alteration on the ground that it was retrospective in operation. *Held*, that the registrar was bound to register it, his duty being confined to considering whether the rules were bad or not for non-conformity with the terms of the Act.—*Reg. v. Brabrook*, 69 L.T. 718.

Burial Ground:—

- (iii.) **Ch. D.**—*Building—Band Stand.*—*Held*, that a metropolitan vestry in building a band stand in a disused burial ground were acting *ultra vires*, and must be restrained by injunction.—*Attorney-General v. St. Pancras Vestry*, 69 L.T. 627.
- (iv.) **Ch. D.**—*Disused—Building on—Metropolitan Open Spaces Act*, 1881, s. 1—*Open Spaces Act*, 1887, s. 4—*Disused Burial Grounds Act*, 1884 s. 8.—In 1842 a piece of land was conveyed to a burial company, and part thereof was used for interments. In 1878 an Order in Council closed the cemetery. In 1885 a wall was built cutting off a part which had not been used for interments. In 1890 another Order in Council closed the cemetery except the unused part. This was contracted to be sold for building. *Held*, that the unused part had been "set apart for interments," and was now a "disused burial ground," and could not be used for building under the Act of 1884.—*Ponsford v. Newport District School Board*, 69 L.T. 687; 42 W.R. 154.

By-Law:—

- (v.) **Q. B. D.**—*Validity—Uncertainty—Justices—Jurisdiction—Weights and Measures Act*, 1889, s. 28.—A county council published a by-law requiring the person in charge of every vehicle carrying coal for sale or delivery to carry a weighing machine of "a form approved." *Held*, that the by-law was not vague or invalid for uncertainty, and that justices who had refused to convict of an offence under it, had exceeded their jurisdiction in entertaining the question of vagueness or uncertainty of language.—*Martin v. Clarke*, 62 L.J. M.C. 178.

Charity:—

- (vi.) **Ch. D.**—*Mortmain—Interest in Land.*—Decision of Ch. D. (*see* Vol. 18, p. 72, i.) affirmed.—*Forbes v. Hardcastle*, 69 L.T. 425.

- (i.) **C. A.**—*Mortmain—Mortmain and Charitable Uses Act, 1891—Will before Act—Death of Testator after Act.*—Decision of Ch. D. (see Vol. 18, p. 32, ii.) affirmed.—*Brompton Hospital v. Lewis*, 42 W.R. 179.

Colonial Law:—

- (ii.) **P. C.**—*Canadian Act, 24 Vict., c. 83—Construction.*—A railway company was authorised by Act of the legislature to construct a railway on the streets of a city, which was authorised to grant an exclusive privilege for that purpose upon such conditions and for such period as might be agreed upon. By certain resolutions, an agreement, and a by-law, such privilege was limited to thirty years. *Held*, that the Act could not be construed as granting a perpetual privilege, but that the privilege was limited to thirty years; and that the limit of time applied to all extensions of the railway authorised in pursuance of the same privilege.—*Toronto Street Railway Co. v. Corporation of Toronto*, L.R. [1898] A.C. 511; 63 L.J. P.C. 10.
- (iii.) **P. C.**—*Jersey—Principal Heir—Representation.*—The enactments of 1851 and 1873, by which representation in regard to personal and acquired real estate was introduced into the law of succession in Jersey in the case of collaterals, are to be taken as referring to the whole estate and succession of the deceased, not as introducing any limited right of representation; and therefore the granddaughter of an elder sister is to be preferred to the son of a younger sister as "principal heir," and as such is entitled to the "saisine" of the personal estate and acquired real estate of the deceased.—*De Quetteville v. Haman*, L.R. [1898] A.C. 502; 69 L.T. 501.
- (iv.) **P. C.**—*New South Wales—Real Property Acts, 26 Vict., No. 9; 41 Vict., No. 18—Caveators in Possession—Onus Probandi.*—Where an applicant, desiring to bring land within the Acts, shewed a complete documentary title, and that he was in possession within twenty years before his application; *held*, that caveators in possession had the onus to shew that the applicant's title had been defeated; that is, that his entries on the land had been ineffective, either from not having been made *animo possidendi*, or from having been made after his title had been extinguished.—*Solling v. Broughton*, L.R. [1898] A.C. 556.
- (v.) **P. C.**—*Nova Scotia—County Incorporation Act, 1879—Construction—Non-feasance—Damages.*—Public corporations, to which an obligation to repair public roads and bridges has been transferred, are not liable to an action in respect of mere non-feasance, unless the legislature has shown an intention to impose such liability on them. *Held*, that there was indication of such an intention in the above-mentioned Act.—*Municipality of Pictou v. Geldert*, L.R. [1893] A.C. 524; 69 L.T. 510; 42 W.R. 114.
- (vi.) **P. C.**—*Ontario Municipal Act, 1887—Construction.*—An action for damages may be brought against a municipality for non-performance of the statutory duty of maintaining drainage works without notice, though notice in writing is required as a condition precedent to an action for a mandamus. An action for damages to the plaintiff's land, *held* to be maintainable so far as the injury was caused by the municipal drain being out of repair, or not being in such a state as to carry off from the plaintiff's land all the water which it could carry off as originally constructed. But, *held*, that so far as the injury was caused by the negligent construction by the municipality under its powers of another drain, the action must be dismissed, the remedy being by arbitration under the statute.—*Corporation of Raleigh v. Williams*, L.R. [1893] A.C. 540; 63 L.J. P.C. 1; 69 L.T. 506.

- (i.) **P. C.**—*Trinidad and Tobago—Magistrate—Jurisdiction.*—The local ordinances 4 of 1889 and 11 of 1891, have not the effect of erecting the stipendiary magistrate into a tribunal competent to try title. Therefore in an action to try title to land, an order of the Supreme Court quashing such magistrate's conviction of the defendant for trespass on land will not sustain a plea of *res judicata*. The magistrate having no jurisdiction to decide an issue of title, the Supreme Court sitting in appeal from him could not exercise a jurisdiction which he did not possess.—*Attorney-General for Trinidad and Tobago v. Eriché*, L.R. [1893] A.C. 518; 63 L.J. P.C. 6; 69 L.T. 505.

Company:—

- (ii.) **Ch. D.**—*Public Undertaking—Debentures—Receiver and Manager.*—A receiver and manager was appointed of the undertaking of a tramway company in an action by debenture-holders.—*Bartlett v. West Metropolitan Tramways Co.*, L.R. [1893] 3 Ch. 437; 69 L.T. 560.
- (iii.) **C. A.**—*Railway Stock—Issue at a Discount—Debentures—Issue at a Discount—Companies Clauses Consolidation Act, 1845—Companies Clauses Acts, 1863, s. 21; 1869, s. 5—Railway Companies Act, 1867, s. 27.*—A company governed by the Companies Clauses Act, 1845, and the Acts amending it, may issue fully paid-up original stock at a discount, and for payment in cash, or other consideration, subject to the liability of the directors for issuing the stock below its value without necessity. *Quere*, whether such a company can issue at a discount stocks subject to the payment of calls. Such company may also issue debentures or debenture stock at a discount, if authorised to raise money by mortgages or debentures. An agreement between a railway company and its bankers, to issue to them paid-up stock and debentures at a discount, in consideration of an advance of money, *held*, under the circumstances to be valid and reasonable.—*Webb v. Shropshire Railway Co.*, L.R. [1893] 3 Ch. 307; 69 L.T. 533.
- (iv.) **H. L.**—*Shares—Certificate—No Title in Transferor—Estoppel.*—Decision of C. A. (*see* Vol. 17, 9, i.) affirmed.—*Balkis Consolidated Co. v. Tomkinson*, L.R. [1893] A.C. 396; 69 L.T. 598; 42 W.R. 204.
- (v.) **C. A.**—*Shares—Issue as Paid-up—Contract—Consideration—Companies Acts, 1862, s. 38, sub-s. 4; 1867, s. 25.*—Decision of Ch. D. (*see* Vol. 19, 6, v.) affirmed.—*In re Eddystone Marine Insurance Co.*, 69 L.T. 363.
- (vi.) **Ch. D.**—*Voluntary Liquidation—Calls on Shares—Powers of Sale and Forfeiture—Exercise of—Directors Dead.*—By the articles of a company the powers of selling and forfeiting shares were vested in the directors. The company was wound-up voluntarily in 1875, and all the then debts were paid. Calls were made on the shares for the purpose of paying chief rents on building land, the property of the company. Some of the calls were not paid, and the liquidators desired to forfeit the shares of the non-paying shareholders. All the directors were dead. *Held*, that a general meeting duly summoned could elect a new board of directors to exercise the powers of sale and forfeiture.—*In re Fairbairn Engineering Co.; ex p. Ladd*, L.R. [1893] 3 Ch. 450; 63 L.J. Ch. 8; 69 L.T. 415; 42 W.R. 155.
- (vii.) **Ch. D.**—*Winding-up—Contributories—Costs—Assets Deficient—Priority.*—The Court had ordered the names of the applicants to be struck off the list of contributories, and ordered the liquidator to pay the applicants their costs out of the assets, and that the liquidator should be allowed his costs, and what he should so pay the applicants, out of the assets. The liquidator admitted assets, but insufficient to pay the taxed costs of the applicants, and the liquidator's costs of the winding-up.

On summons by the applicants for payment of their costs. *Held*, that the liquidator must pay the costs of the applicants and of the summons out of the assets after deducting only the costs of realisation; but that, if the liquidator so desired, an account would be directed of the assets remaining after deducting the costs of realisation.—*In re Staffordshire Gas and Coke Co.*, L.R. [1898] 3 Ch. 528; 63 L.J. Ch. 68; 69 L.T. 876.

- (i.) **C. A. — Winding-up — Contributory — Vendor's Shares — Contract — Estoppel**—*Companies Acts*, 1862, ss. 23, 74; 1867, s. 25.—A company agreed to purchase a business, part of the consideration being the issue to the vendors or their nominees of forty founders' shares fully paid up. The contract for the purchase was not registered. Certificates of founders' shares were sent to the vendors' nominees, with a letter from the secretary of the company, stating that the acceptance of the shares would impose no liability on the recipients. The recipients acknowledged the receipt by letter, containing no qualification or condition. The shares were, in fact, never allotted. The company was wound-up, and the liquidator settled the recipients on the list of contributories for the whole amount of the founders' shares. *Held*, that as the names of the recipients had not been entered on the list of shareholders, they could not be made contributories unless they had contracted to take shares, or had by their conduct estopped themselves from denying that they were shareholders; that no such contract or estoppel had been proved, and that they must be removed from the list of contributories.—*E. p. Phillips*; *in re Macdonald & Co.*, 69 L.T. 567.
- (ii.) **Ch. D. — Winding-up — Charges of Fraud — Outside Public — Examination**—*Companies (Winding-up) Act*, 1890, s. 8, sub-s. (3).—The section above mentioned does not apply to a case where charges are made against a company of having, in the course of its business, committed frauds on the outside public only, and not in any way connected with the promotion or formation of the company.—*In re Medical Battery Co.*, 42 W.R. 191.
- (iii.) **Q. B. D. — Winding-up — Report of Official Receiver — Suggestion of Fraud**—*Companies Act*, 1890, s. 8, sub-ss. 2, 3.—A suggestion of fraud, in the promotion or formation of a company, made by the official receiver in his report, is sufficient to support an order for the examination of the promoters and directors, although the report contains no direct charge of fraud.—*In re Birkdale Steam Laundry Co.*, L.R. [1898] 2 Q.B. 886; 63 L.J. Q.B. 20; 42 W.R. 144.
- (iv.) **C. A. — Winding-up — Debenture-holders' Action — Exceptional Assets — Realisation**.—Where, after the presentation of a winding-up petition, an action was commenced by debenture-holders to realise their security, and after a winding-up order having been made, the assets pledged to the debenture-holders were of such a nature that they could not be easily and conveniently realised by an official of the Court, or by anyone who was not specially conversant with these exceptional assets, the Court appointed a receiver on behalf of the debenture-holders of these particular securities, and left the official receiver in the winding-up to be the receiver of all the other assets.—*Industrial and General Trust v. South American and Mexican Co.*, 69 L.T. 698; 42 W.R. 181.
- (v.) **Ch. D. — Winding-up — Scheme of Arrangement — Reservation of Rights of Sureties — Transfer to New Company — Staying Proceedings — Joint Stock Companies Arrangement Act, 1870, s. 2.—Where a scheme of arrangement is sanctioned it is not necessary to insert a reservation of the rights of sureties for the company's debts, or to insert in the order sanctioning the scheme—at any rate, in a winding-up by or under supervision of**

the Court—of any express words staying proceedings by creditors, or discharging contributories from further liability than that imposed by the scheme. Where the scheme contemplates the formation of a new company, the shares in which are to be taken by the shareholders in the old company as not fully paid-up, the Court may require the insertion in the memorandum of association of the new company of a clause preventing the shareholders from escaping liability by transferring their shares.—*In re London Chartered Bank of Australia*, L.R. [1893] 3 Ch. 540; 62 L.J. Ch. 841; 69 L.T. 593; 42 W.R. 14.

Compulsory Purchase :—

- (i.) **Ch. D.—Public Body—Special Act—Payment in—Costs—Jurisdiction—Supreme Court of Judicature Act, 1890, s. 5.**—Where an Act enabling a public body to take land compulsorily contains no provision as to payment out of Court of money paid in under the Act, the Court has jurisdiction to order the public body to pay the costs of and incidental to a petition for payment out.—*In re Fisher*, L.R. [1894] 1 Ch. 53; 63 L.J. Ch. 71.

Contract :—

- (ii.) **P. C.—Negotiation by Telegram—Incompleteness.**—A telegraphed "Will you sell us B.H.P. ? Telegraph lowest cash price." X. telegraphed in reply, "Lowest price for B.H.P. £900." A. telegraphed "We agree to buy B.H.P. for £900 asked by you. Please send us your title deed in order that we may get early possession." There was no answer. *Held*, that there had never been any offer by X., and that the last telegram was not an acceptance, but an offer to buy, which had not been accepted, and that there was no contract.—*Harvey v. Facey*, L.R. [1893] A.C. 552; 62 L.J. P.C. 127; 69 L.T. 504; 42 W.R. 129.
- (iii.) **C. A. & Q. B. D.—Statute of Frauds, s. 4—Indemnity.**—A term in a contract of agency, under which the agent becomes liable to indemnify his principal against loss arising from the non-payment of the debts of other persons, is not "a special promise to answer for the debt, default, or miscarriage of another person," and need not be in writing.—*Sutton & Co. v. Grey*, 69 L.T. 854 and 678; 42 W.R. 195.
- (iv.) **Q. B. D.—Theatrical Engagement—Breach of—Negative Stipulation—Injunction.**—The defendant agreed to act and to understudy as a member of the plaintiff's theatrical company for a certain period, subject to certain rules, one of which was that no member of the company should act at any other theatre without permission. The plaintiff produced a play, in which the defendant was not given a part, but was called on to understudy. The defendant asked the plaintiff to cancel the engagement, and on this being refused, began to act elsewhere. The plaintiff sued for an injunction. The defendant alleged that the plaintiff had promised him certain parts, but had failed to keep his promise. *Held*, that the alleged verbal promise could not, in the absence of anything showing want of good faith on the plaintiff's part, be taken into consideration in construing the agreement, that the allotting of parts to the defendant was no part of the consideration, that the plaintiff had not failed to carry out the contract, and that the defendant ought to be restrained from acting except at a theatre where the plaintiff's company was playing.—*Grimston v. Cunningham*, L.R. [1894] 1 Q.B. 125.

Conversion :—

- (v.) **C. A.—Money to be Invested in Land—Devise of Land.**—Money arising from the sale under a power of settled lands in Staffordshire was directed by the settlement to be re-invested in land. C. was tenant

for life, with remainder to his sons successively in tail, with remainder to himself in fee. He died without issue, having devised his Staffordshire lands to X., and his residuary real and personal estate to Y. *Held*, that the money was to be regarded as land, and that, as under the trust it might have been invested in land in any county, it would not pass under the devise of the Staffordshire land, but under the residuary devise.—*In re Duke of Cleveland's Settled Estates*, L.R. [1893] 8 Ch. 244.—*Barnard v. Wolmer*, 62 L.J. Ch. 955.

County Court:—

- (i.) **Q. B. D.**—*Appeal—Fine for Assault on Bailiff*—"Matter"—*County Courts Act*, 1888, ss. 48, 120, 186.—*Semble*, that a proceeding in respect of which there is a form of summons given in the forms appended to the county court rules is a "matter" within sect. 186, although there is no rule prescribing how it shall be commenced. *Held*, that there is no appeal from the order of a county court judge imposing a fine for an assault upon the bailiff of the Court, while in the execution of his duty.—*Lewis v. Owen*, L.R. [1894] 1 Q.B. 102.
- (ii.) **Q. B. D.**—*Appeal—Interlocutory Matters—Taxation—County Courts Act*, 1888, ss. 120, 121, 122.—There is a right of appeal from a county court to the high court in all interlocutory matters, including questions of taxation.—*Gilson and Sons, v. Kilner*, 69 L.T. 810.
- (iii.) **C. A.**—*Jurisdiction*—"District in which the Cause of Action wholly or in Part arose"—*Non payment for Goods—County Courts Act*, 1888, s. 74.—An action was commenced in the Bath county court for the price of goods sold and delivered by the plaintiff, who carried on business in Bath, under a contract made in Essex with the defendant, who resided in Essex. *Held*, that non-payment of the price was part of the cause of action, that the price ought to have been paid in Bath, and that the Bath county court had jurisdiction.—*Northey Stone Co. v. Gidney*, L.R. [1894] 1 Q.B. 99; 42 W.R. 99.
- (iv.) **C. A.**—*Practice—Default Summons—Service out of Jurisdiction—Form of Affidavit*.—In applying for leave to issue a default summons in a county court for service out of the jurisdiction to recover a claim exceeding £5, the affidavit in support of the application need not state that the defendant does not follow any of the occupations specified in Order 5, rule 10, of the County Court Rules, 1889.—*Gordon v. Evans*, 42 W.R. 193.

See Replevin, p. 57, ii.

Covenant:—

- (v.) **Ch. D.**—*Restrictive—Building Estate—Acquiescence—Breaches by Plaintiff*.—Lots forming parts of a building estate were subject to covenants that no buildings thereon should be used as a shop, workshop, or factory, and that no trade or manufacture should be carried on on any lot. W. had, since 1886, carried on the business of a laundryman on one of the lots. In 1898 he began to erect on one of the lots a building adapted solely for his business. The plaintiff moved to restrain him. It was shown that all the buildings on the estate were private residences, but that trades had been openly carried on in some of them. The plaintiff had committed breaches of the covenant on his own lot, of an unimportant nature. *Held*, that the defendant had committed a breach of the covenant; that such breach was greater and more serious than any previously committed; and that the plaintiff was entitled to an injunction.—*Meredith v. Wilson*, 69 L.T. 836.

Domicil:—

- (i.) **Ch. D.—Infant—Fatherless—Change of Mother's Domicil.**—The change of the domicil of a fatherless infant which may result from the change of the mother's domicil, is not the necessary consequence of the change of the mother's domicil, but is the consequence of her exercise of a power vested in her for the welfare of the infant, which power she may abstain from exercising though she changes her own domicil. Therefore where a Scotch widow married a second time, and, on going to reside permanently in England, left one of her children in Scotland with an aunt, with whom she had resided since her father's death: *Held*, that the domicil of such child was not changed.—*In re Beaumont*, L.R. [1893] 3 Ch. 490; 62 L.J. Ch. 923; 42 W.R. 142.

Easement:—

- (ii.) **Ch. D.—Light—Prescription—Lease—Reservation.**—The plaintiff was lessee from X. of houses on one side of a street. X. owned houses on the other side of the street. The plaintiff's lease provided that the "lessors" should be at liberty to deal with any premises "adjoining or contiguous" to the demised premises, in any manner they should think fit, and to erect any buildings thereon, whether such buildings should or should not diminish the light and air enjoyed by the demised premises. The lease provided that the word "lessors" should include X. and his assigns. No alteration was made in the houses opposite to the plaintiff's premises for more than twenty years. After that time the defendant under an agreement with X., began to erect new buildings on the site of such houses which obstructed the plaintiff's lights. *Held*, that the above-mentioned clause in the lease prevented the plaintiff from acquiring a right to light by twenty years' enjoyment; that the opposite houses were "adjoining or contiguous" to the plaintiff's premises, as the lease and agreement respectively passed the street *usque ad medium filum viæ*; and that the defendant was an "assign" of X. under the provision in the lease. *Held*, therefore that the defendant was entitled to obstruct the plaintiff's light.—*Haynes v. King*, L.R. [1898] 3 Ch. 439; 63 L.J. Ch. 21.
- (iii.) **Ch. D.—Light and Air—Damages—Injunction.**—In an action for an injunction to restrain interference with light and air, and for damages, where it was proved that the injury to the plaintiff's light and air was trifling, *held*, that where the injury to the plaintiff's rights was substantial, and there was no imperfection in his title (as by laches), nor any other special circumstances, the proper remedy was injunction, but that where the injury was small, the Court would in its discretion grant damages instead of an injunction. Judgment for £120 damages for actual and prospective interference, and costs.—*Martin v. Price*, 69 L.T. 712.

Ecclesiastical Law:—

- (iv.) **C. A.—Pews—Title—Prescription.**—Decision of Q. B. D. (*see* Vol. 18, p. 115, iii.) affirmed. *Held*, also, that the action ought not to have been entertained at all, it being an abuse of the process of the Court to ask for an injunction to restrain the defendants from acting under a faculty which had not yet been obtained.—*Proud v. Price*, 69 L.T. 664; 42 W.R. 102.

Evidence:—

- (v.) **P. D.—Privilege—Conversation with Clergyman.**—In a divorce suit by the husband it appeared that after the discovery of an alleged act of adultery by the respondent, she had a conversation with a clergyman,

who was called as a witness on behalf of the petitioner. He objected on the ground of privilege to disclose the conversation or anything that took place at the interview. *Held*, that the objection could not be sustained.—*Normanshaw v. Normanshaw*, 69 L.T. 468.

Executor:—

- (i.) **Ch. D.**—*Assent to Legacy—Mortgage.*—The mere fact that an executor has made general payments to or for the benefit of a legatee of leaseholds and other property, not specially out of or on account of the rents, is not sufficient to enable the Court to infer that the legacy has been assented to. An executor is not entitled, on behalf of the estate, to take shares in a building society, or to make the estate liable for him as a shareholder therein; but a mortgage by an executor to a building society, though made to secure all moneys becoming due from him as a shareholder, as well as the money advanced and interest, is not wholly void, but is good to the extent of the money advanced and reasonable interest, provided the advance was made in good faith to the executor in that capacity.—*Thorne v. Thorne*, L.R. [1893] 3 Ch. 196; 63 L.J. Ch. 38; 69 L.T. 378.
- (ii.) **C. A.**—*Devastavit—Payment of Debt—Statute-barred.*—Decision of Ch. D. (see Vol. 19, p. 10, iii.) affirmed.—*Midgley v. Midgley*, L.R. [1893] 3 Ch. 282.

Factor:—

- (iii.) **Ch. D.**—*Pledge—Validity—5 & 6 Vict., c. 89.*—In 1887 T. entrusted A. with a picture for sale. A. was a dealer in drawings and etchings, and occasionally sold pictures on commission. He deposited the picture with B., in substitution for certain drawings, as security for a loan. B. died, and A. became insolvent. T. sued B.'s executors for the recovery of the picture. *Held*, that A. was an agent "intrusted with the possession of goods," that the pledge was valid, and that B.'s estate was entitled to a charge on the picture for the amount of the loan.—*Tremouille v. Christie*, 69 L.T. 388.

Friendly Society:—

- (iv.) **C. A.**—*Rules—Arbitration—Validity of Award—Irregularity—Justices Jurisdiction—Friendly Societies Act, 1875, s. 22 (d).*—*Held*, reversing the decision of Q. B. D. (see Vol. 19, p. 11, i.) that as the arbitrators had given a decision which was valid until set aside, the justices had no jurisdiction to hear the case.—*Bache v. Billingham*, L.R. [1894] 1 Q.B. 107; 63 L.J. M.C. 1; 69 L.T. 648.

Highway:—

- (v.) **C. A.**—*Extraordinary Traffic—Excessive Weight—Highways and Locomotives Act, 1878, s. 23.*—Decision of Q. B. D. (see Vol. 19, p. 11, iii.) affirmed.—*Etherley Grange Coal Co. v. Auckland District Highway Board*, L.R. [1894] 1 Q.B. 37; 69 L.T. 702; 42 W.R. 198.
- (vi.) **C. A.**—*Extraordinary Traffic—Highways and Locomotives Act, 1878, s. 23.*—"Extraordinary traffic" as distinct from "excessive weight" includes such continuous or repeated user of the roads by a person's vehicles as is out of the common order of traffic, and as may be calculated to damage the road and increase the cost of repair. It is a carriage of articles over the road, at either one or more times, which is so exceptional in the quality or quantity of articles carried, or in the mode or time of user of the road, as substantially to alter and increase the burden imposed by ordinary traffic, and thereby to

cause damage beyond what is common. The mere user of the road by one person more than others does not constitute "extraordinary traffic," the traffic must be extraordinary as regards the ordinary user of the road by all who use it, and not merely large as regards the traffic put on it by other persons.—*Hill v. Thomas*, L.R. [1893] 2 Q.B. 233; 69 L.T. 539; 42 W.R. 85.

- (i.) **C. A.**—*Non-Repair of—Projection of Sewer Grating—Liability of Local Authority—Public Health Act, 1875, ss. 13, 16, 19, 144, 149.*—Owing to the non-repair of a highway by the defendants, owing to which the surface of the road had become worn away, the iron sewer grating, which had been lawfully and properly fixed in the highway by the defendants, who had the control of the sewers, projected above the surface of the highway, and the plaintiff thereby suffered injury. *Held*, that as the accident was caused solely by the non-repair of the highway, the defendants were not liable; and that the fact that they had control of the sewers as well as of the highway did not render them liable.—*Oliver v. Horsham Local Board*; *Thompson v. Mayor and Corporation of Brighton*, 42 W.R. 161.

Husband and Wife :—

- (ii.) **Ch. D.**—*Ante-nuptial Agreement—Wife's Reversionary Chose in Action—Election to Confirm Settlement.*—A husband had entered into an ante-nuptial agreement for the settlement of the wife's property, including a policy of insurance to which she was entitled under an instrument made before Malins's Act. A memorandum of the agreement was signed by the husband alone, and the settlement was executed by him alone. By a subsequent deed, acknowledged by the wife, the policy was assigned to the trustees of the settlement. She afterwards, in exercise of a power in the settlement, mortgaged the policy. *Held*, that the wife by acting on the contract had elected to confirm the settlement, and was bound to perform the contract fully, and that the mortgage was therefore valid.—*Greenhill v. North British and Mercantile Insurance Co.*, L.R. [1893] 3 Ch. 474; 62 L.J. Ch. 918; 69 L.T. 526; 42 W.R. 91.
- (iii.) **P. D.**—*Post-nuptial Settlement—Petition to Vary—Allowance Reduced.*—The petitioner and his wife separated under a deed by which the petitioner allowed his wife £200 a year, without any *dum casta* clause. He afterwards found that she was living with the co-respondent. He obtained a decree for divorce. Upon petition to vary the settlement, *held*, that the allowance should be reduced to £100 a year, to be payable to the respondent only *dum sola et casta vixerit*.—*Saunders v. Saunders*, 69 L.T. 498.
- (iv.) **C. A.**—*Desertion—Alimony—Married Women (Maintenance in Case of Desertion) Act, 1886, s. 1.*—Decision of Q. B. D. (see Vol. 19, p. 11, v.) affirmed.—*Chudley v. Chudley*, 69 L.T. 617.
- (v.) **P. D.**—*Divorce—Alimony and Costs—Receiver.*—On an *ex parte* application by the petitioner, the wife, the Court made an order for a receiver until next motion day, limited to receiving from the respondent's bankers the amount due to the petitioner for alimony and costs, the petitioner undertaking to be liable in damages in case the receivership should be set aside.—*Angliss v. Angliss*, 69 L.T. 462.
- (vi.) **C. A.**—*Divorce—Condonation—Damages—Costs—20 and 21 Vict., c. 85, ss. 29, 30, 31, 51, 59.*—Where a husband condones his wife's adultery with a particular man, such condonation is not affected by the fact that she has also committed adultery with other men, of which he is ignorant. When a husband has condoned his wife's adultery with a particular man, he cannot recover damages against that man. The

costs of all petitions, whether they claim damages or not, are in the discretion of the Court, and on this point there is no appeal. A wife committed adultery with A. and B. Her husband condoned the adultery with A., being ignorant of that with B. He afterwards petitioned for divorce, making A. and B. co-respondents. Damages were claimed only against A. A decree nisi for divorce, with costs, was granted against B. *Held*, that the husband could not obtain a decree on the ground of the adultery with A., or obtain damages against him, and that the petition against him could be dismissed with costs.—*Bernstein v. Bernstein*, L.R. [1893] P. 292; 63 L.J. P. 8; 69 L.T. 513.

- (i.) **P. D.—Divorce—Incestuous Adultery—Acquittal of Husband on Criminal Charge of Rape—Evidence.**—On a wife's petition charging her husband with incestuous adultery with his own child, it appeared that a jury in a criminal court had acquitted him of the charge of rape, but had convicted him of an attempt to carnally know the child. The Court, notwithstanding the certificate of conviction, allowed evidence to prove that incestuous adultery had taken place, and pronounced a decree of divorce.—*Virgo v. Virgo*, 69 L.T. 460.
- (ii.) **P. D.—Divorce—Intervention of Queen's Proctor—Resumption of Cohabitation—Decree Rescinded.**—The petitioner had obtained a decree nisi for divorce on account of his wife's adultery. His solicitors afterwards informed the Queen's Proctor that he had forgiven his wife, and that he should not take steps to have the decree made absolute. The Court, on affidavits by the parties that they were living together again, rescinded the decree nisi without requiring the Queen's Proctor to file a formal plea.—*Flower v. Flower*, L.R. [1893] P. 290; 42 W.R. 204.
- (iii.) **P. D.—Divorce—Intervention—Charge of Adultery—Application by Person Charged to Intervene**—41 Vict., c. 19, s. 2.—The wife having obtained a decree nisi, the Queen's Proctor intervened, charging her with adultery with X. X. took out a summons asking for leave to intervene. The summons was dismissed.—*Grieve v. Grieve*, L.R. [1893] P. 288; 69 L.T. 462.
- (iv.) **C. A.—Divorce—Queen's Proctor—Intervention of—Previous Findings—Estoppel.**—Decision of P. D. (see Vol. 18, p. 117, v.) affirmed.—*Butler v. Butler*, 63 L.J. P. 1; 69 L.T. 545.
- (v.) **P. D.—Divorce—Maintenance—Post-Nuptial Settlement—Order in Excess of Amount allotted by Settlement.**—The wife, who had obtained a decree of divorce, petitioned for permanent maintenance. By post-nuptial deeds, made apparently in consideration of the abandonment of former proceedings, she was to receive an allowance of £100 a year in the event of the husband's adultery or cruelty. His income was £600 a year. *Held*, that notwithstanding the deeds, she was entitled to permanent maintenance at the rate of £200 a year.—*Wilkinson v. Wilkinson*, 69 L.T. 459.
- (vi.) **C. A.—Divorce—Maintenance—Matrimonial Causes Act, 1857, s. 32.**—The Court may, before a decree for divorce has been made absolute, confirm the registrar's report approving of maintenance for the wife, order the husband to secure the maintenance on the decree becoming absolute, and in the meantime restrain him from dealing with his property so as not leave sufficient security.—*Waterhouse v. Waterhouse*, L.R. [1893] P. 284; 63 L.J. P. 115; 69 L.T. 618.
- (vii.) **P. D.—Divorce—Variation of Settlements—Petition for—Amendment after Time expired—Second Marriage of Respondent.**—A wife obtained a decree of divorce. There was an ante-nuptial settlement in 1877 of the wife's property, and a post-nuptial settlement in 1878 of the husband's property. By the latter deed the respondent took the first

life interest subject to an annuity to the petitioner till her death or re-marriage, and after his death the property was to go to his children by the petitioner or any future wife as he should appoint, and in default of appointment it was to be divided amongst his children by any marriage. He had also power to raise a sum by mortgage of his life interest, and to appoint the income after his death to any future wife, and to appoint new trustees. He married again after the decree absolute, after executing a settlement on his second wife, and exercising his power of appointment under the settlement of 1878 in favour of his children by her, to the exclusion of the children of the first marriage. The wife petitioned for variation of the settlement of 1877, and amended the petition, after the time for petitioning had expired, by including the settlement of 1878. The respondent had become a bankrupt, and his life interests under the settlements had been sold with notice of the divorce proceedings. *Held*, that his interest under the settlement of 1877 should be extinguished, and that his powers of appointment under the settlement of 1878 should be extinguished to the extent of leaving the children of the first marriage to take as if there had been a default of appointment, this extinction to operate only during the petitioner's life or until she should marry again.—*Nevill v. Nevill*, 69 L.T. 463.

- (i.) **P. D.**—*Divorce—Wife's Petition—Condonation—Fresh Adultery—Delay.*—The respondent left the petitioner and went to live with another woman. The petitioner instituted a suit for judicial separation, but abandoned it at the request of the respondent's brother, who made her an allowance. The respondent returned to the petitioner, who forgave him, and lived with him for a short time, when he again left her and never contributed anything to the support of her or their children. She knew that he had returned to the woman with whom he had previously been living, but was unable to take proceedings owing to want of means, till ten years after the desertion, when money was lent her for the purpose. *Held*, that the delay was sufficiently accounted for, and that the petitioner was entitled to a divorce for adultery and desertion.—*Binney v. Binney*, 69 L.T. 498.
- (ii.) **P. D.**—*Separation—Custody of Children—Magistrates—Remittal to.*—The magistrates, who had rightly granted a separation order to the wife, refused to determine in a judicial manner the question of the children's custody. The Court on appeal from them declined to deal with the matter by hearing fresh evidence, and remitted the case to the magistrates upon the points as to the wife's fitness or unfitness to have the custody of the children, and as to the amount of her allowance.—*Foulkes v. Foulkes*, 69 L.T. 461.

Injunction :—

- (iii.) **Ch. D.**—*Jurisdiction—Quo Warranto.*—The Court has jurisdiction to restrain a school board from declaring a member in default and proceeding to the election of a new member. The presence of a member of the board at a meeting, though he takes no part in the proceedings, and sits with the public, prevents the rule as to absence for six months taking effect. A school board, in declaring a member disqualified owing to absence, without giving him an opportunity of explaining his absence, is acting illegally.—*Richardson v. Methley School Board*, L.R. [1893] 3 Ch. 510; 62 L.J. Ch. 943; 69 L.T. 308; 42 W.R. 27.

Insurance :—

- (iv.) **C. A.**—*Securities—Suretyship or Insurance—Scheme of Arrangement—Statutory Discharge—Discharge of Surety.*—The defendants, by an instrument which purported to be a "policy of insurance," guaranteed

to the plaintiff payment of a sum of money deposited by her in an Australian bank, if the bank should make default in payment. The bank did make default. A scheme of arrangement between the bank and its creditors was agreed to at a meeting of creditors. The plaintiff did not assent to the scheme, which, however, was binding on her by colonial statute. *Held*, that notwithstanding the scheme of arrangement, the defendants were liable to the plaintiff under their contract with her. — *Dane v. Mortgage Insurance Corporation*, L.R. [1894] 1 Q.B. 54.

Interest :—

- (i.) **H. L.**—*Traffic Agreement between Railways—Monthly Balances—Verification of Accounts*—3 & 4 Will. IV., c. 42, s. 28.—Decision of C. A. (*see* Vol. 17, p. 47, v.) affirmed.—*L.C. & D.R. v. S.E.R.*, L.R. [1893] A.C. 429; 69 L.T. 637.

Interpleader :—

- (ii.) **Q. B. D.**—*Deposit by Claimant—Forfeiture of—Second Seizure—Second Deposit—County Courts Act, 1888, s. 156.*—An execution creditor seized goods in the house of the judgment debtor. The claimant claimed the goods, and paid into Court as a deposit the appraised value thereof to avert the sale. An interpleader issue was tried, the goods were adjudicated to be the property of the debtor, and the deposit was paid to the execution creditor. The debt remained unsatisfied. The execution creditor put in another execution upon the same goods, which remained on the same premises. The claimant again claimed the goods and paid a second deposit. *Held*, that though no title to the goods passed to the claimant on the payment of the first deposit, yet that the creditor was estopped from claiming the second deposit, as he had already received the full value of the goods in taking the first deposit.—*Haddow v. Morton*, L.R. [1894] 1 Q.B. 95; 63 L.J. Q.B. 38.

Jurisdiction :—

- (iii.) **H. L.**—*Trespass—Land in Foreign Country—Defendant Resident in England—R.S.C., 1883, O. xxxvi., r. 1.*—The Supreme Court has no jurisdiction to entertain an action for damages for trespass on land situated abroad; the rules as to local venue confer no new jurisdiction. Decision of C. A. (*see* Vol. 18, p. 13, ii.) reversed.—*British South Africa Co. v. Companhia de Moçambique*, L.R. [1893] A.C. 602; 69 L.T. 609.

Justices :—

- (iv.) **Q. B. D.**—*Disqualification by Interest—Rating Appeals—Special Sessions*—16 Geo. II., c. 18, ss. 1, 3—27 and 28 Vict., c. 39, s. 6.—Justices of a corporate city, sitting at special sessions, have jurisdiction to hear an appeal against a poor-rate, although they are rated for the relief of the poor in the parish for which the rate appealed against is laid.—*Reg. v. Bolinbroke*, L.R. [1893] 2 Q.B. 347; 62 L.J. M.C. 180; 69 L.T. 717; 42 W.R. 128.
- (v.) **C. A.**—*Disqualification—Bias—Poor Rates—Appeal Against—Rate-payers.*—A justice is not disqualified from acting at special sessions in the determination of a rating appeal by reason of the fact that he is a ratepayer in the parish in which the rate appealed against was made.—*E. p. Overseers of Workington*, 42 W.R. 177.

Landlord and Tenant:—

- (i.) **H. L.—Agreement for Letting—Special Purpose—Application to other Purpose—Injunction.**—The owner of land in Ireland agreed with a Roman Catholic bishop to let some land to him and his successors, in order to provide a suitable residence and holding for a Roman Catholic officiating clergyman upon the estate, to be held so long as there should be and remain stationed upon the premises such an officiating clergymen, appointed by the bishop and his successors. Huts of wood, not attached to but resting on the land, were erected as a shelter for evicted tenants. *Held*, that this user was an application of the premises to a purpose other than that specified, and therefore a breach of the agreement, and that the landlord was entitled to have it restrained by injunction.—*Kehoe v. Marquess of Lansdowne*, L.R. [1893] A.C. 451; 62 L.J. P.C. 97.
- (ii.) **Q. B. D.—Bankruptcy—Rent due at Bankruptcy—Valuation—Set-off—Apportionment—Apportionment Act, 1870.**—The debtor was tenant of a farm at a rent payable half-yearly on April 11th and October 11th, and at the date of his bankruptcy was under notice to quit on the next 11th October. The trustee did not disclaim the tenancy. On the expiration of the notice to quit a valuation was made between landlord and tenant, the amount of which did not equal the arrears of rent due. *Held*, that the landlord, upon proof of the custom prevailing in the county of Norfolk, where the farm was situated, was entitled to set-off the amount of valuation due by him to the outgoing tenant, against the whole arrears of rent. *Held*, also, that the Apportionment Act apportioned liabilities as well as rights.—*E. p. Lord Hastings*; in *re Wilson*, 62 L.J. Q.B. 628.
- (iii.) **C. A.—Distress—Getting over Wall.**—A landlord's bailiff, being employed to distrain for rent in a house, climbed over the garden wall from the backyard of the adjoining premises, and entered the house through an open window. *Held*, that it was not illegal to climb over the wall, and that the distress was lawful.—*Long v. Clarke*, L.R. [1894] 1 Q.B. 119; 69 L.T. 654; 42 W.R. 130.

Lands Clauses Act:—

- (iv.) **Ch. D.—Money in Court—Re-investment in Land—Costs—Apportionment—Scale Fee.**—The costs of a conveyance of land purchased as a re-investment of several funds in Court representing the purchase-moneys of lands belonging to a charity and taken at different times by various bodies under the Act, were charged according to the scale in the General Order. There was great inequality in the amounts of the funds dealt with. *Held*, that the scale charges being readily apportioned, ought, like the *ad valorem* stamp, to be borne rateably according to the several amounts contributed to the purchase-money by the several bodies who took the lands.—*In re Bishopsgate Foundation*, 42 W.R. 199.

Licensing:—

- (v.) **Q. B. D.—Beerhouse Licensed before 1869—Application for Transfer—Discretion of Justices—Licensing Act, 1828, s. 14—Wine and Beerhouse Act, 1869, ss. 8, 19.**—A beerhouse which had been licensed for the sale of beer to be consumed on the premises prior to May 1st, 1869, was to be pulled down for a public purpose. The holder of the licence applied for a grant of a corresponding licence for another house. *Held*, that the justices had a general discretion to refuse the application, and were not confined to the four grounds of refusal mentioned in the Act of 1869.—*Traynor v. Jones*, L.R. [1894] 1 Q.B. 83; 42 W.R. 201.

- (i.) **Q. B. D.**—*Death of Licence-holder—Minority of Heir—Licensing Act, 1872, s. 3.*—It is not necessary that the heir of a licensed person who dies before the expiration of his licence should have attained the age of twenty-one years before he can sell intoxicating liquors and carry on the business of the licensed house until the next special sessions without incurring the penalties provided by the Act.—*Rose v. Frogley*, 62 L.J. M.C. 181; 69 L.T. 346.

Limitations:—

- (ii.) **Ch. D.**—*Gavelkind Lands—Possession of Father as Bailiff for Son.*—Where a father has entered into possession of gavelkind lands as natural guardian, and on behalf of his infant son, the mere fact of the coming of age of the son will not change the nature of the father's possession; and if nothing else has been done to alter the character of the possession, the Statute of Limitations will not begin to run in favour of a person claiming against the son, until the death of the father.—*Tinker v. Rodwell*, 69 L.T. 591.
- (iii.) **C. A.**—*Trustee—Solicitor to Trust.*—A trust fund was entrusted by the trustees to their solicitor to invest, and was by him invested together with other moneys belonging to different trusts on a mortgage in his own name. The mortgage was paid off in 1879, and the solicitor received the money so invested, and distributed one moiety of the trust fund, which had become absolutely vested. He retained the other moiety and did not account for the same. In 1891 an action was brought against his estate for an account. *Held*, that the action was not barred by the statute as the solicitor must be considered an express trustee; either as having been trustee for his clients, the real trustees, or as having assumed to act as trustee, being a stranger to the trust.—*Soar v. Ashwell*, L.R. [1893] 2 Q.B. 390; 69 L.T. 585; 42 W.R. 165.

Local Government:—

- (iv.) **C. A.**—*County Council—Jurisdiction—Power to Amend Local and Personal Acts—Local Government Act, 1888, ss. 57, 59 (6).*—By the statute of 9 Anne, c. 22, a tax was laid upon coals coming to London, and commissioners were appointed for the purpose of building new churches. By 10 Anne, c. 11, the commissioners were empowered to buy land for cemeteries to be used with the new churches; and sect. 4 provided that whenever they should buy land for such a cemetery outside a new parish it should become part of that parish. In accordance with these provisions land in the parish of P. was bought and assigned to be the cemetery of the new parish of G., and was used as such until it was closed. The county council proposed to make an order transferring such land from the parish of G. to the parish of P. *Held*, that, whether the statutes of Anne were general or local and personal, sect. 4 of the latter statute was a local and personal enactment, and that the county council had power to make an order which would amend it.—*Reg. v. London County Council*, L.R. [1893] 2 Q.B. 454; 63 L.J. Q.B. 4; 69 L.T. 580; 42 W.R. 1.
- (v.) **Q. B. D.**—*Drainage—Default of Local Authority—Enquiry—Procedure—Order—Mandamus—Public Health Act, 1875, s. 299.*—The Local Government Board had issued orders calling upon two local sanitary authorities to perform their duty within six months in the matter of a complaint in each order mentioned by executing works for the proper drainage of their districts. Enquiries had been held by inspectors of the board, who found that default had been made, but declined to admit evidence as the great difficulties and expense of drainage schemes, or as to the probable cost of such schemes. The Local

Government Board neither proposed nor suggested any definite schemes. *Held*, that a *mandamus* must go calling upon the authorities to perform their duty in the terms of the orders. As there was no legal error, and no omission of legal form, the Court could not enquire whether there had been a due enquiry or whether the findings of the Local Government Board were sufficient or not.—*Reg. v. Staines Union*, 62 L.J. Q.B. 541; 69 L.T. 714.

- (i.) **C. A.**—*Paving Street—Apportionment of Expenses—Dispute—Action—Jurisdiction—Public Health Act, 1875, ss. 150, 257, 268.*—Decision of Ch. D. (*see* Vol. 18. p. 122, ii.) reversed.—*Mayor, &c., of Folkestone v. Brooks*, L.R. [1893] 3 Ch. 22; 62 L.J.Ch. 863; 69 L.T. 123.
- (ii.) **Ch. D.**—*Removal of Sign—Power of Commissioners—Right of Owner of Sign to Object.*—The commissioners of the town of Crediton, in pursuance of their local Act, gave the defendant fourteen days' notice requiring him to remove a sign which projected into the street, and which they considered dangerous to the public passage along the street. The defendant refused to remove the sign. *Held*, that if he wished to object to the requisition he ought to have asked for an opportunity of being heard in opposition; and that as he had not taken that course he had lost his right (if any) to object, and must be restrained from interfering with the removal of the sign by the commissioners.—*Attorney-General v. Hooper*, L.R. [1893] 3 Ch. 483; 63 L.J. Ch. 18; 69 L.T. 340.
- (iii.) **C. A.**—*Water Supply—Mains Under Streets—Private Road—Consent of Owner—Notice—Waterworks Clauses Act, 1847, ss. 28, 29, 30—Public Health Act, 1875, ss. 16, 54, 57.*—Decision of Ch. D. (*see* Vol. 18, p. 15, iv.) reversed.—*Hill v. Wallasey Local Board*, 63 L.J. Ch. 1; 69 L.T. 641; 42 W.R. 81.

Lunatic :—

- (iv.) **C. A.**—*Judgment Creditor—Charging Order on Fund in Court—Protection of Fund—Maintenance of Lunatic.*—There was a fund in Court the property of a lunatic. A charging order was made charging the fund with the amount of judgments obtained against the lunatic. *Held*, that such order did not prevent the Court from sanctioning a scheme for the maintenance of the lunatic out of income and capital, or entitle the judgment creditors to have any portion of the capital impounded for their benefit.—*In re Plenderleith*, L.R. [1893] 3 Ch. 332; 62 L.J. Ch. 993; 69 L.T. 325.

Married Woman :—

- (v.) **Q. B. D.**—*Equitable Execution—Receiver—Settlement—Life Interests of Husband and Wife in Furniture.*—Furniture and effects were vested in the trustees of a marriage settlement on trust to allow the wife to use the same for her sole and separate use for life, and after her death to allow the husband to use the same for life. There was a power of sale over the furniture, the income arising from the proceeds to be paid to such persons as the husband and wife should jointly appoint, and in default to the wife for life for her sole and separate use without power of anticipation, with trusts over in favour of the children. A judgment creditor of the husband and wife applied for a receiver of the interests of the husband and wife under the settlement. *Held*, that having regard to the terms of the settlement there was no power to appoint such a receiver.—*Whitaker v. Cohen*, 69 L.T. 451.

Master and Servant:—

- (i.) **C. A.**—*Hackney Carriage—Negligence of Driver—Liability of Proprietor—Hackney and Stage Carriages (Metropolis) Acts, 1831 and 1843.*—The registered proprietor of a hackney carriage in London is in all cases liable for the acts of the driver to the same extent as if the driver were his servant.—*Keen v. Henry*, 69 L.T. 671.

Mayor's Court:—

- (ii.) **Q. B. D.**—*Irregularity in Procedure—Taxation—Prohibition.*—The Judge of the Mayor's Court awarded costs on the higher scale, but omitted to state in his certificate any ground for so doing. *Held*, that prohibition would not lie. This omission, though an irregularity in procedure, was not an act done without jurisdiction; and an act done by a judge within his jurisdiction does not become a matter for prohibition, merely because there happens to be no remedy by way of appeal.—*Reg. v. Lord Mayor of London and Stock*, 62 L.J. Q.B. 589; 69 L.T. 721.

Metropolis Management Act:—

- (iii.) **Q. B. D.**—*Repairs of Road—Necessity of Works—Question as to—Metropolis Management Act, 1890, s. 3.*—It is for vestries and district boards to decide as to the necessity of works for the repair of carriage roads, and they are not bound to prove such necessity to the satisfaction of the tribunal before which they seek to recover the apportioned expenses of such works.—*Stroud v. Wandsworth Board of Works*, L.R. [1894] 1 Q.B. 64; 63 L.J. M.C. 6.
- (iv.) **C. A.**—*Valuations—Appeal—Time for Hearing—Valuation of Property (Metropolis) Act, 1869, s. 42, sub-s. 13.*—See Vol. 19, p. 16, iv. *Held*, by C. A., that the justices in Quarter Sessions had authority to hear the appeal, although the time prescribed by the Act had expired, but that a writ of prohibition ought to go because the appeal was not an appeal against totals, but against the value of hereditaments, which would not lie except from a decision of justices in special sessions. *Quære*, whether the London County Council had any right of appeal.—*Reg. v. Justices of the County of London*, L.R. [1893] 2 Q.B. 476; 69 L.T. 682.

Mortgage:—

- (v.) **Ch. D.**—*Priorities—Charge of Annuities—Receivership Deed—Notice.*—It is not necessary to use any general words of charge to constitute a charge in equity, but it is sufficient if an intention can be gathered that the property dealt with by an instrument should constitute a security. By a marriage settlement X. was entitled to an annuity charged on the life estate of A. in certain family property, and secured by a term vested in trustees. By a receivership deed of even date with and reciting the settlement, A. covenanted to pay the annuity, and appointed a receiver to receive the rents of the property in the name of A. during his life, and thereout, after paying outgoings, to pay the annuity. A. also covenanted not to revoke the appointment of the receiver during the life of X. The defendants became mortgagees of the life estate of A., having notice of the receivership deed. *Held*, that by the receivership deed the annuity of X. was charged upon the life estate of A., and had priority over the mortgage of the defendants.—*Cradock v. Scottish Provident Institution*, 63 L.J. Ch. 15; 69 L.T. 380.
- (vi.) **C. A.**—*Sale—Irregularity—Purchaser Without Notice—Conveyancing Acts, 1881, s. 21, sub-s. 2; 1882, s. 3, sub-s. 1.*—Decision of Ch. D. (see Vol. 19, p. 16, vi.) affirmed.—*Bailey v. Barnes*, L.R. [1894] 1 Ch. 25; 69 L.T. 542; 42 W.R. 66.

Notice :—

- (i.) **P. C.**—*Constructive—Transfer of Shares—Trust.*—Where shares had been transferred as security for a loan. *Held*, that derivative transferees from the lender were not affected by a trust in favour of the borrower, unless such trust was clearly disclosed on the face of the title, or was otherwise notified to the transferees. The words "manager in trust" appended to the signature of a bank manager, imports that he acted as trustee for his employers, and are not calculated to suggest that he stood in a fiduciary relation to some third person, so as to affect a transferee for value with constructive notice of such relationship.—*London and Canadian Loan and Agency Co. v. Duggan*, L.R. [1893] A.C. 506; 63 L.J. P.C. 14.

Partition :—

- (ii.) **Ch. D.**—*Set-Off—Interest.*—Parties who had bought under liberty to bid, in a partition action, and had been allowed to set-off part of the purchase-money against their shares, were charged interest at the rate of three per cent. on the amounts set-off.—*Field v. Dracup*, L.R. [1894] 1 Ch. 59.

Partnership.—*See Arbitration*, p. 32, iv.

Poison :—

- (iii.) **Q. B. D.**—*Sale of—Pharmacy Act, 1868, s. 15.*—In order to render a person liable for selling a poison without being a chemist, it is not sufficient to prove the sale of a compound containing an infinitesimally small quantity of a poison.—*Pharmaceutical Society v. Delves*, L.R. [1894] 1 Q.B. 71; 42 W.R. 192.

Poor Law :—

- (iv.) **H. L.**—*Rating—Sewage Works—Beneficial Occupation—Hypothetical Tenant.*—The London County Council were owners of lands, pumping stations, deodorizing works, and outfall sewers, forming part of the metropolitan sewage system, and necessary to enable them to perform statutory duties. As used the lands and works were incapable of yielding a profit, and the London County Council were practically the only possible tenants. If the lands and works had been owned by a private person the county council would have been willing to pay a rent sufficient to support the rateable value at which they had been assessed; but except for the purposes of the sewage system the rateable value would be lower. *Held*, that the true test of beneficial occupation was not whether a profit could be made, but whether the occupation was of value; that even if the county council could not under their Acts be legally tenants, they ought to be taken into account as hypothetical tenants, for the purpose of determining the rateable value of the lands and works; that the lands and works were rateable, and that the county council were assessed on the true principle. Decisions of C. A. (*see* Vol. 17, p. 137, iv., and Vol. 18, p. 90, iii.) reversed.—*London County Council v. Churchwardens of Erith*, L.R. [1893] A.C. 562.
- (v.) **C. A.**—*Rating—Easement.*—Decision of Q. B. D. (*see* Vol. 19, p. 18, ii.) reversed.—*Halkyn District Mines Drainage Co. v. Holywell Union Assessment Committee*, 69 L.T. 705.
- (vi.) **C. A.**—*Rating—Exclusive Occupation.*—Decision of Q. B. D. (*see* Vol. 19, p. 18, iii.) affirmed.—*Southport Corporation v. Ormskirk Assessment Committee*, 42 W.R. 158.

- (i.) **Q. B. D.—Rating—Exclusive Occupation—River Formed into Canal.**—A railway company had been empowered to dredge and cleanse a river, and to maintain it, and the locks, new cuts, canals and towing path, navigable for boats, and to take tolls on craft using it. *Held*, that the company was not liable to be rated in respect of the natural river course, but that they were liable in respect of the towing path as exclusive occupiers, irrespective of the question whether they were owners of the soil.—*M.S. & L.R. Co. v. Doncaster Assessment Committee*, 69 L.T. 850.
- (ii.) **Q. B. D.—Removal—Lunatic Pauper over Sixteen living with Father—Lunacy Act, 1890, ss. 288, 289, 290, 294.**—A pauper lunatic over sixteen years of age lived with her father for two years and a-half within the appellants union. In October, 1891, her father removed with his family to a parish within the respondent union, with no intention of returning. The lunatic was afterwards taken to an asylum. In August, 1892, two justices made an order adjudging her settlement to be in the appellants union, and ordering such union to pay for her maintenance. *Held*, that the order was appealable; and that when the lunatic left the appellants union with her father as part of his family, she put an end to her status of irremovability there, and that the order must be quashed.—*Hendon Union v. Hampstead Guardians*, 62 L.J. M.C. 170.
- (iii.) **Q. B. D.—Settlement—Pauper Lunatic—Soldier—Lunacy Act, 1890, ss. 286, 290—Army Act, 1881, ss. 91, 163.**—The attestation paper of a pauper lunatic soldier at the time of his enlistment stated that he was born in the parish of C. The Secretary of State for War made an order that he should be admitted into the county asylum. No information could be obtained from the lunatic as to his birthplace, and it could not be ascertained by inquiry that he had ever had a settlement in the parish of C. The justices, acting on the evidence of the attestation paper, refused to make an order on the county. *Held*, that the case must be remitted to the justices to make the order upon the county, the attestation paper not being sufficient evidence of a settlement.—*Guardians of Chertsey Union v. Clerk of the Peace of Surrey*, 69 L.T. 884.

Power:—

- (iv.) **Ch. D.—Appointment—Appointment to Trustee for Object—Transfer of Fund.**—By marriage settlement, a fund was vested in trustees upon trust, after the deaths of the husband and wife, for such of the children as they should appoint. The husband and wife executed a deed appointing that the trustees should, after their deaths, stand possessed of one-sixth part of the trust fund in trust for R., a daughter, for her separate use. And they declared that the appointment was made to her upon certain trusts for the benefit of E., another daughter. *Held*, that the settlement trustees ought to retain the appointed part, and not to hand it over to R.—*Knight-Bruce v. Butterworth*, L.R. [1894] 1 Ch. 56; 69 L.T. 689; 42 W.R. 172.

Practice:—

- (v.) **P. C.—Appeal—Security for Costs—Accidental Error—Order of 1853, Rule v.**—Where an appeal to Her Majesty had been admitted in the Supreme Court of New South Wales, and security for costs deposited to be dealt as the Privy Council should think fit, and the appeal stood dismissed without special order for want of prosecution, *held*, that the respondent should apply to the Supreme Court to correct its order by directing that costs should abide the result of the appeal; and in the event of such application being refused, should apply for special leave to appeal from such refusal.—*Milson v. Carter*, L.R. [1893] A.C. 688; 62 L.J. P.C. 126.

- (i.) **Q. B. D.—Deceased Plaintiff—Receiver—Application by Executors—***R.S.C.*, 1883, *O. xvii.*, *r. 4*; *O. lxii.*, *rr. 8, 23*.—The executors of a deceased plaintiff, whose judgment is still unsatisfied, cannot apply for a receiver of the defendant's interest under a will, and for an injunction to restrain him from dealing therewith, without having applied for an order that the proceedings might be continued in their names.—*Norburn v. Norburn*, 42 W.R. 127.
- (ii.) **C. A.—Discovery—Postponement of Inspection—Question of Law—***R.S.C.*, 1883, *O. xxv.*, *r. 2*; *O. xxxi.*, *r. 20*.—The common order for discovery had been made against the defendants, who made an affidavit of documents which were very voluminous, and afterwards applied by summons that further discovery might be postponed till certain issues of law, which were not raised by the pleadings, but which they submitted to the Court, should be determined. *Held*, that the defence might be amended so as to raise the issues which it was sought to have determined; and that the Court then had jurisdiction to order further discovery to be postponed till such issues had been determined.—*Lever v. Land Securities Co.*, 42 W.R. 104.
- (iii.) **Ch. D.—Evidence—Commission to Take.**—In the exercise of its discretion as to granting a commission to take evidence abroad, the Court will not regard the case of a defendant with the same strictness as the case of a plaintiff who has chosen his own forum.—*Ross v. Woodford*, L.R. [1894] 1 Ch. 38.
- (iv.) **C. A.—Judgment—Action against Firm—Infant Partner—***R.S.C.*, 1883, *O. xiv.*, *r. 1*; *O. xlviii a*, *rr. 1, 8*.—A specially indorsed writ was issued against a firm consisting of two partners, one an infant. Both partners appeared, the infant by his guardian *ad litem*. *Held*, that judgment could be signed against the firm, although one partner was an infant.—*Harris v. Beauchamp Brothers*, L.R. [1893] 2 Q.B. 534; 69 L.T. 373; 42 W.R. 37.
- (v.) **C. A.—Jury—Right to—***R.S.C.*, 1883, *O. xxxvi.*, *rr. 4, 6, 7*.—An action was brought in the Queen's Bench Division in respect of a claim which, before the Judicature Act, might have sued on either in Chancery or at common law. *Held*, that the defendants could not claim a trial by jury as a matter of right.—*Baring Brothers & Co. v. North Western of Uruguay Railway Co.*, L.R. [1878] 2 Q.B. 406.
- (vi.) **C. A.—Parties—Joinder of Plaintiffs—Separate Causes of Action—***R.S.C.*, 1883, *O. xv.*, *r. 1*; *O. xviii.*, *rr. 1, 8*.—The several shippers of different shipments of cotton, shipped on the same ship for carriage from and to the same place, joined as plaintiffs in one action on their several bills of lading for damages for short deliveries. *Held*, that they could so join, subject to the judge's power to order separate trials, or to make such other order as might be necessary, in case it should afterwards appear that any of the claims could not conveniently be disposed of with the others.—*Hannay and Co. v. Smurthwaite*, L.R. [1893] 2 Q.B. 412; 69 L.T. 677; 42 W.R. 133.
- (vii.) **Ch. D.—Pleadings—Embarrassing—Delay.**—An agreement prohibited the defendant, on leaving the plaintiff's employment, from exercising a certain trade within a certain area, under a penalty of £500, as liquidated damages. The defendant left the plaintiff's service, and broke the agreement. The plaintiff claimed an injunction and damages, and obtained an interim injunction. The action was set down for argument whether the defendant was not released from liability on payment of £500. The plaintiff asked for an injunction, withdrawing his claim for damages. *Held*, that the defendant ought to have called on the plaintiff to elect between his claims, as he could not succeed in both,

and the pleadings were embarrassing; but that he was now too late in taking the point, and that an injunction must be granted.—*Gent v. Harrison*, 69 L.T. 307.

- (i.) **P. D.—Probate Suit—Compromise—Terms filed—Motion to make Terms a Rule of Court.**—Terms of compromise of a probate suit were signed, which provided that all proceedings should be stayed, and that the terms should be filed in the registry. It was not provided that they should be made a rule of Court. In consequence of a dispute, one of the parties moved to have the terms made a rule of Court. *Held*, that there was no jurisdiction to do so, as the terms did not expressly provide that they should be made a rule of Court, and the suit was at an end.—*Graves v. Graves*, 69 L.T. 420.
- (ii.) **C. A.—Security for Costs—Liquidator of Company—Judgment for Plaintiffs—Reversal.**—The liquidators of a company, on an application by the defendants for security for costs, gave an undertaking "to set apart out of the assets of the company a sum sufficient to meet the costs (if any) which the plaintiff company may be liable to pay to the defendants." The plaintiff company was successful at the trial, and the liquidators distributed the assets, though they knew that an appeal would be brought. The judgment was reversed on appeal. *Held*, that the liquidators were still liable on their undertaking, but only to the extent of £200, which was the amount of security for which the defendants had asked in their summons for security for costs.—*Hawkins Hill Consolidated Gold Mining Co. v. Want, Johnson and Co.*, 62 L.J. Q.B. 505; 69 L.T. 297.
- (iii.) **Ch. D.—Service out of Jurisdiction—Notice of Motion—R.S.C., 1883, O. xl., r. 1; O. lii., r. 9.**—Unconditional appearance to a writ served out of the jurisdiction is submission to the jurisdiction as to the whole claim, though part of it is outside Order xl., rule 1. On motion to discharge an order giving leave to serve a writ out of the jurisdiction (part of the claim being outside Order xl., rule 1) the order was allowed to stand; but it was ordered that the plaintiff should not be entitled to relief on the part of the claim outside such rule. *Seem*, the Court cannot allow notice of motion for an injunction to be served out of the jurisdiction along with the writ.—*Manitoba and North Western Land Corporation v. Allan*, L.R. [1893] 3 Ch. 432; 69 L.T. 558.
- (iv.) **C. A.—Service out of Jurisdiction—Writ—R.S.C., 1883, O. xi., r. 1 (g).**—When leave is given to serve notice of a writ out of the jurisdiction upon a foreign subject resident or carrying on business in a foreign country, who is a necessary or proper party to an action properly brought against a person duly served within the jurisdiction, an order ought not to be made, except under special circumstances, that the plaintiff shall not sign judgment or issue execution against the foreign defendant without leave.—*Firth and Sons v. De Las Rivas* (No. 2), 62 L.T. 666; 42 W.R. 100.
- (v.) **Q. B. D.—Set-off—Receiver—Personal Liability.**—The defendant was executor of G., and receiver and manager of his estate. G. had guaranteed a loan made by the plaintiff to X., in respect of which the defendant had paid the plaintiff £550, and obtained judgment against X. for that sum. In the course of managing G.'s farm the defendant bought goods from X. for which he owed X. £45, which debt X. assigned to the plaintiff. The defendant sought to set off the judgment against such debt. *Held*, that as between the defendant and X. the debt of £45 was a personal one, and that the defendant could not set it off against the debt to the estate of G.—*Nelson v. Roberts*, 69 L.T. 352.

- (i.) **Ch. D.**—*Settled Land—Sale of—Summons for Rescission—Service—Settled Land Acts, 1882, s. 31, sub-s. 3, s. 46, sub-s. 5, s. 50, sub-ss. 1, 3; 1890, s. 4.*—A tenant for life contracted to sell the settled estates free from incumbrances. His wife, who claimed to be assignee for value of his life interest, was not a party to the sale, and refused to consent. The purchaser took out a summons for a declaration whether her consent was necessary, and had been obtained, and that if it was necessary and had not been obtained, he was entitled at his option to rescind the contract or to have specific performance with compensation. The summons was served on the vendor, and also on his wife. She objected to the jurisdiction. *Held*, that had been improperly served on her, and must be dismissed. — *In re Ailesbury Settled Estates*, 62 L.J. Ch. 1012; 69 L.T. 493; 42 W.R. 45.
- (ii.) **P. D.**—*Subpoena—Difficulty in Serving—Alleged Obstruction.*—Although it is the moral duty of a private inquiry agent to afford all reasonable facilities for the service of subpoenas upon his assistants, in a case in which they have been employed, he is not liable to attachment, unless he actually obstructs such service. In the absence of evidence of actual obstruction the Court refused to issue an attachment against the inquiry agent, but being of opinion that the conduct of the inquiry agent, or of a person acting on his behalf and with his authority, had given the petitioner reasonable ground to apply for an attachment, dismissed the application without costs. — *Wylam v. Wylam*, 69 L.T. 500.
- (iii.) **C. A.**—*Taxation—Agency Charges—Firms of Solicitors having Common Partners—R.S.C. 1883, Appendix N., Costs, r. 119.*—Agency charges for work done by a London firm of solicitors as agents for a country firm—two partners out of those in each firm being the same—were disallowed on taxation. *Held*, that the disallowance was proper, being in accordance with the practice of the chancery taxing masters for forty or fifty years, which practice the Court would not overrule. — *In re Borough Commercial and Building Society*, 42 W.R. 161.

Principal and Agent:—

- (iv.) **C. A.**—*Excess of Authority—Receipt by Cheque—Cheque Dishonoured.*—C. was the plaintiff's tenant and was restricted from assigning his lease without licence. He applied for licence to assign, which the plaintiff consented to grant, and put the matter into the hands of the defendant as his agent, with instructions to keep the licence in his hands until certain arrears of rent had been paid by C. The defendant handed over the licence to C. on receipt of a cheque for the arrears and his own commission. The cheque was dishonoured. *Held*, that as there was no evidence of usage to justify the defendant in accepting payment by cheque, he had exceeded his authority in doing so, and that the plaintiff was entitled to recover damages for his negligence, such damages being the amount of rent in arrear. — *Papé v. Westcott*, 42 W.R. 131.
- (v.) **Q. B. D.**—*Sale by Agent—Limited Authority—Title of Purchaser—Estoppel—Factors Acts.*—Plaintiff entrusted a valuable chattel to X., a dealer in gems, &c., who, as a known part of his business, sold gems, &c., for other people, in his own name, and having them in his possession. The chattel was entrusted on terms that it should not be sold without the plaintiff's further authority, and that the cheque received in payment should be handed to the plaintiff intact. X. sold the chattel to the defendant for £200, which was satisfied by a payment of £30 to X., and the obtaining of the discharge of a judgment against him. Plaintiff sued to recover possession of the chattel. *Held*, that X. was acting outside his authority in selling the chattel without the plaintiff's

further authority, and therefore the defendant obtained no title against the plaintiff, who was not estopped from disputing his title. *Held*, that as the chattel was never entrusted for sale, and as, having regard to the mode of payment, the sale was not in the ordinary course of business, the defendant was not protected by the Factors Act in force at the date of the transaction (6 Geo. IV., c. 94, s. 4).—*Biggs v. Evans*, L.R. [1894] 1 Q.B. 88; 69 L.T. 723.

- (i.) **C. A.—Undisclosed Principal—Set-Off of Agent's Debt.**—The plaintiffs employed B. to collect moneys due to them under policies of marine insurance. B. employed the defendants to collect such moneys. The defendants did not know that B. was not acting as a principal. After the defendants had collected some moneys the plaintiffs gave notice that it was to be paid to them. B. had become bankrupt, and the defendants claimed to set-off against the moneys so collected a debt due to them from B. *Held*, that they were entitled to make the set-off.—*Montagu & Co. v. Forwood Brothers & Co.*, L.R. [1893] 2 Q.B. 350; 69 L.T. 371; 42 W.R. 124.

Principal and Surety:—

- (ii.) **C. A.—Contribution.**—F., with E. and B. as sureties, gave a bond to secure the payment of a sum of money at the end of five years with interest in the meantime. The bond provided that if E. or B. should die, and if F. did not within one month procure a solvent person to enter into a further bond to the same effect as the former one, the principal sum should at once become payable. E. died, and a fresh bond was given by F., B., and H. to the same effect as the former bond, with a proviso that the liability of E.'s estate should not be altered, varied, or lessened. B. and H. paid the debt. *Held*, that E.'s estate was liable to contribute to the extent of one-third of what they had paid.—*Coles v. Peyton*, L.R. [1893] 3 Ch. 238; 62 L.J. Ch. 991.

Railway:—

- (iii.) **Q. B. D.—Level Crossing—Handrails, &c.—Power of Justices—Railways Clauses Act, 1845, ss. 46, 47, 61, 62.**—The justices have no power to order the erection of handrails and fences on a level crossing, where the road is a carriage road and general highway, but only where it is a bridleway, footway, or highway other than a public carriageway.—*Reg. v. Schofield*, 69 L.T. 311.
- (iv.) **Q. B. D.—Passenger—Forcible Removal of—Assault—Implied Authority.**—There is an implied authority by a railway company to its servants to remove passengers from carriages in which they are misconducting themselves, or travelling without payment of fare. But a railway company is liable for the acts of its servants if, in pursuance of such authority, but acting under a misapprehension, they eject a passenger who has neither misconducted himself, nor omitted to pay his fare.—*Lowe v. G.N.R.*, 62 L.J. Q.B. 524.
- (v.) **C. A.—Special Act—Rate for Forwarding Traffic of another Company—No Duty towards Public.**—Where by a section in a special Act of the A. company, certain provisions were made as to the charges which might be made by the B. company for traffic coming over their line from or destined for the line of the A. company, and such provisions appeared by the context to be intended solely to protect the interests of the A. company against the B. company, *held*, that no duty was thereby created other than to the A. company, and that a person whose goods had been carried by the B. company over their line to the line of the A. company, could not set up, by way of defence to an action for charges made by the B. company for such carriage which

were within the maximum authorised rates, that such charges were in excess of the rates provided by the section above-mentioned.—*Taff Vale Railway Co. v. Davis*, L.R. [1894] 1 Q.B. 43.

- (i.) **C. A. & Q. B. D.**—*Working of Minerals—Line Unsafe—Mandamus to Company to Maintain Line.*—The applicants, who owned the minerals under a railway, worked the clay under the line, which in consequence became unsafe. The company were not allowed by the applicants to prop the line up, and therefore abandoned it. The applicants obtained a rule for a mandamus to compel the company to re-instate and keep open the line. *Held*, that mandamus was the proper remedy if justified by the circumstances, but that the words of the company's Act being enabling and not compulsory, there was no absolute duty on the company to maintain the line, and that they could abandon it, and that a mandamus ought not to issue in favour of the persons who had themselves pulled the line down.—*Reg. v. G.W.R.; e. p. Ruabon Brick Co.*, 62 L.J. Q.B. 572; 69 L.T. 443 & 572.

Replevin :—

- (ii.) **Q. B. D.**—*Measure of Damage—Consequential Damage—County Court—Appeal—Value of Goods—County Courts Act, 1888, s. 120.*—Goods of the plaintiff were seized under a distress for alleged arrears of rent, and the plaintiff claimed damages under various heads in the county court. One of such heads of damage was "illegal distress," and another was "annoyance and injury to credit and reputation in trade." *Held*, that such damages were recoverable in an action of replevin. On an objection to an appeal on the ground that the goods were not of the value of £20, *held*, that where there is no finding of the value of the goods the Court must determine their value on such evidence as may be before it.—*Smith v. Enright*, 69 L.T. 724.

Revenue :—

- (iii.) **Q. B. D.**—*Income Tax—British Company—Trade Abroad—Profits not Remitted—5 & 6 Vict., c. 35, s. 100, Sched. D., Cases 4 & 5—16 & 17 Vict., c. 34, s. 2, Sched. D.*—In the case of two British companies, one of which worked a brewery in America, and the other of which invested its capital in shares of other companies, and held shares in four German companies, *held*, in the case of the first, that profits arising in America, and retained in America to be paid as dividends to American shareholders, and in the case of the second, that dividends received on the shares in the four German companies, and retained in foreign banks to be applied in paying dividends to foreign shareholders, were not chargeable with income tax.—*Bartholomay Brewing Co. v. Wyatt; Nobel Dynamite Trust Co. v. Wyatt*, L.R. [1893] 2 Q.B. 499; 62 L.J. Q.B. 525; 69 L.T. 561; 42 W.R. 173.
- (iv.) **H. L.**—*Land Tax—Railway Tunnel.*—Decision of C. A. (see Vol. 17, p. 103, v.) affirmed.—*Metropolitan Railway v. Fowler*, L.R. [1893] A.C. 416; 62 L.J. Q.B. 553; 69 L.T. 390.
- (v.) **Q. B. D.**—*Share Capital—Increase of—Duty on—Conversion of Debenture Stock—Customs and Inland Revenue Act, 1889, s. 17.*—Under the powers of a special act certain debenture stock of an incorporated company where the liability was limited by Act of Parliament was cancelled, and an amount of First Preference Stock was created in lieu thereof. *Held*, that this was an increase of the "nominal share capital" of the company, and that the company was bound to deliver a statement of the same to the Commissioners of Inland Revenue.—*A.-G. v. Milford Docks Co.*, 69 L.T. 453.

- (i.) **Q. B. D.—Stamp—Conveyance—Stamp Act, 1870, s. 70 & Schedule.**—An instrument by which the partners of a trading firm carry out an arrangement *inter se* to transfer their business and property to a limited company, consisting of themselves alone, is not liable to *ad valorem* duty as a “conveyance on sale,” but only to a duty of 10s.—*Foster & Co. v. Commissioners of Inland Revenue*, 62 L.J. Q.B. 518; 69 L.T. 529.

Right of Way:—

- (ii.) **Q. B. D.—Open Space—Public User—Dedication.**—Mere user by the public of an open space is not sufficient evidence of an intention on the part of the owner to dedicate the whole surface of the open space to the public.—*Robinson v. Cowpen Local Board*, 62 L.J. Q.B. 619.

Riparian Owner:—

- (iii.) **H. L.—Scotch Law—Mine—Right to Pump Water from Mine into River.**—A mine-owner who commences, without prescriptive right, to pump water into a stream from his mine, and thereby prejudicially affects the water of the stream, may be interdicted at the suit of a riparian owner for whose use the stream is rendered less suitable.—*Young v. Bankier Distillery Co.*, L.R. [1893] A.C. 691.

River Clyde:—

- (iv.) **H. L.—Clyde Navigation Acts—Construction of.**—The Erskine ferry is not part of the undertaking of the trustees of the Clyde Navigation, and they are not bound to repair damages done to the piers of the ferry.—*Trustees of the Clyde Navigation v. Lord Blantyre*, L.R. [1893] A.C. 703.

Scotch Law:—

- (v.) **H. L.—Heritage—Real or Personal Burden—Titles to Land Consolidation (Scotland) Act, 1868, s. 19, sub-s. 4.**—A testator, by *mortis causâ* settlement, conveyed to his son in general terms his whole estate, heritable or moveable, declaring in the dispositive clause that the disposition was granted, and was to be accepted under the following burdens which “are hereby declared to be real burdens on the estates and effects hereby conveyed.” One of these was an annuity to the testator’s daughter. After the testator’s death, the son completed titles to the various heritable subjects in which the testator had been infeft by expeding and recording notarial instruments in terms of the section above-mentioned. In all these instruments, the annuity was inserted at full length, and declared to be a real burden on the land. The son’s estate was sequestrated, and the trustee in bankruptcy claimed that the annuity had not been validly constituted a real burden upon the lands. *Held*, that it had been so constituted.—*Cowie v. Muirden*, L.R. [1893] A.C. 674.
- (vi.) **H. L.—Marriage Contract—Provision for Issue of Children—Whether Contractual or Testamentary.**—A conveyance in an ante-nuptial contract of marriage in favour of the children of the marriage and the issue of such children is not revocable by the spouses as regards the issue of the children.—*Macdonald v. Scott*, L.R. [1898] A.C. 642.
- (vii.) **H. L.—Voluntary Church—Contract—Trust.**—The rules of a cathedral of the Scottish Episcopal Church provided, *inter alia*, that there should be three or more canons residentiary, and that the temporal affairs of the cathedral should be vested in a board of management, with which should rest the administration of the funds, and the providing fitting

support "for the provost and canons." One of the canons sued the board with reference to the apportionment of their funds. *Held*, that the action was irrelevant, that there was no contract or trust of which he was a beneficiary, and that the distribution of the funds by the board could not be questioned so long as they were administered in good faith and applied only to cathedral purposes.—*Brook v. Kelly*, L.R. [1893] A.C. 721.

Settled Land:—

- (i.) **C. A.—Improvements—Application of Capital Moneys—Settled Land Acts, 1882, ss. 21, 25, 26, 53; 1890, s. 13, sub-ss. 2, 4.**—The Settled Land Acts do not authorise the application of capital moneys to matters of mere amenity or luxury, such as the indulgence of architectural tastes. The building of a house for an estate agent is also not an improvement to which capital moneys can be applied.—*In re Lord Gerard's Settled Estates*, L.R. [1893] 3 Ch. 252; 63 L.J. Ch. 23; 69 L.T. 393.
- (ii.) **Ch. D.—Improvements—Rentcharges—Repayment—Settled Land Act, 1890, s. 15.**—The Court cannot order trustees to employ capital moneys in repaying to the tenant for life rentcharges created to pay for improvements, which rentcharges have been paid before the matter came before the Court. Expenditure under the Act must be an expenditure of moneys in hand, and there cannot be a charge *in futuro*. The Court would be abdication its discretion if it made an order dealing with capital moneys hereafter to arise. A letter from the tenant for life to one of the trustees stating that he has expended large sums out of his private moneys in improvements, and asking for the advice and opinion of the trustee, but not suggesting an application to the Court, cannot be treated as a request to apply to the Court.—*In re Lord Bristol's Settled Estates*, L.R. [1893] 3 Ch. 161; 62 L.J. Ch. 901; 69 L.T. 304; 42 W.R. 46.
- (iii.) **Ch. D.—Settlement—Trust for Sale—Powers of Management—Equitable Tenant for Life—Leave to Exercise Powers of Tenant for Life—Costs—Parties—Incumbrances—Settled Land Acts, 1882, s. 63; 1884, s. 7 (ii).**—Settlement of land (subject to a legal rentcharge) upon trust for sale, with power of postponement, the income to be upon trust for a married woman for life for her separate use. The trustees had vested in them large powers of management, and had no present intention of selling. The costs of management being heavy, the equitable tenant for life applied for possession or receipt of the rents and profits, and for leave to exercise her powers under the Settled Land Acts other than the powers of sale and exchange. *Held* (1), that under the circumstances the Court would, on the grounds of convenience and economy, have let the tenant for life into possession; (2) that the Settled Land Acts afforded additional grounds for doing so; (3) that the tenant for life ought to have leave to exercise the powers of the Acts other than those of sale and exchange; (4) that the tenant for life must pay the costs, there being no case against the trustees; (5) that the owner of the rentcharge was not a necessary party to the application.—*Bagot v. Kittoe*, 42 W.R. 170.
- (iv.) **C. A.—Sale—Discharge of Incumbrances—Two Estates devolving differently—Settled Land Act, 1882, ss. 2 (3), 21 (ii), 22 (2) (5), 53.**—A testator devised estates A. and B. to his son for life, with remainder to such of his son's children as should attain twenty-one. Estate A. was mortgaged in fee, and estate B. was unincumbered. Part of B. was sold by the tenant for life, and the purchase-money was applied in part discharge of the mortgage on A. The tenant for life died and the contingent remainders failed with respect to B. The heir-at-law,

on whom B. devolved, claimed a charge on A. for the money which had been applied in part discharge of the mortgage, on the ground that, as the estates had devolved in different ways, they were not part of the same settled estate. *Held*, that there was one settlement and one settled estate, that capital money arising from one part of the estate was properly applied in the discharge of an incumbrance affecting the other part, and that the claim of the heir-at-law failed.—*Freme v. Logan*, L.R. [1894] 1 Ch. 1; 69 L.T. 613; 42 W.R. 119.

See Practice, p. 55, i.

Settlement:—

- (i.) **C. A.**—*Construction—Forfeiture—Trust till Bankruptcy or Death—Limitation over on Death—Implication—Interim Income.*—By a marriage settlement certain funds belonging to the wife were settled upon trust to pay the income to her for life, and after her death to the husband until he should become bankrupt or alienate the same, or until his death, whichever should first happen; and after the death of the survivor of the wife and husband, then upon trust for the children of the marriage. The husband became a liquidating debtor, and then the wife died, leaving him surviving. *Held*, that the limitation over had taken effect, and that the trust fund went over to the children on the death of the wife.—*Roberts v. Akeroyd*, L.R. [1893] 3 Ch. 363; 63 L.J. Ch. 32; 69 L.T. 474.

Sheriff:—

- (ii.) **Q. B. D.**—*Execution for more than £20—Sale by Private Contract—Bankruptcy Act, 1883, s. 145.*—Where a sheriff under an execution for a sum exceeding £20 sells the debtor's goods by private contract with the consent of the debtor but without the leave of the Court, such sale is, until set aside by the Court, valid as against a subsequent execution creditor.—*Crawshaw v. Harrison*, L.R. [1894] 1 Q.B. 79.

Ship:—

- (iii.) **P. D.**—*Bill of Lading—Negligence Clause.*—By charter-party and bill of lading the defendants were exempted from liability for damage to cargo arising from dangers and accidents of the sea or other waters, and all accidents of navigation, even when occasioned by the negligence, &c., of the master or other servants of the shipowner, but it was provided that unless stranded, &c., the defendant should not be exempted from liability for damage to cargo caused by improper opening of valves. While the ship was in harbour a valve was properly opened, but improperly and negligently left open, whereby water entered and damaged the cargo. The vessel was towed into shallow water, when she took the ground, and the water was pumped out. *Held*, that the negligence clause applied to "accidents of the sea or other waters" as well as to "accidents of navigation," and that the words "unless stranded, &c.," constituted a condition preventing liability attaching to the shipowner. *Semble*, that the damage was an "accident of navigation," although the ship was in harbour.—*The Southgate*, L.R. [1893] P. 329.
- (iv.) **C. A.**—*Charter-party—Advance Freight—Freight payable on Signing Bills of Lading—Loss before Bills Signed—Liability of Charterer.*—A charter-party provided that one-third of the freight was to be paid on signing bills of lading, which were to be signed within twenty-four hours after the cargo was on board. The ship sank and the cargo was lost before the bills of lading were signed. The charterers refused to present the bills of lading for signature, and the shipowner sued them for breach of contract. *Held*, that the charterers were

bound to present the bills of lading for signature, and that the ship-owner was entitled to damages equal to the amount of advance freight.—*Oriental Steamship Co. v. Tylor*, L.R. [1893] 2 Q.B. 518; 69 L.T. 577; 42 W.R. 89.

- (i.) **Q. B. D.**—*Charter-party—Demurrage*—“*Restraints of Princes and Rulers.*”—A ship was chartered to load nitrate at Iquique in Chili at the rate of 200 tons per day from the day she was ready to receive cargo to the day of despatch, “restraints of princes and rulers, political disturbances or impediments, during the said voyage, mutually excepted.” From January 29th to March 5th it was impossible to load nitrate at Iquique owing to civil war. After March 5th it was possible to load at Iquique, but there was only a small quantity of nitrate stored there, and further supplies could not be obtained owing to the civil war until March 23rd. The vessel then loaded and sailed on April 8th. She put into another port for coal, which was very dear at Iquique, and was there detained, owing to a claim by one of the hostile parties for export duty, which had been already paid to the other party. The shipowners claimed demurrage. *Held*, that the delays fell within the exception in the charter-party.—*Smith and Service v. Rosario Nitrate Co.*, L.R. [1893] 2 Q.B. 323.
- (ii.) **C. A.**—*Charter-Party—Demurrage—Strikes.*—By charter-party it was agreed that a ship should proceed “to London, either to the Pool, Regent’s Canal, Victoria Docks, Derricks, or Beckton,” as ordered by the charterers, eighty-four hours being allowed for loading and discharging the cargo, “strikes of workmen at the port of loading or discharging excepted.” The charterers ordered the ship to proceed to the Regent’s Canal. After she started a strike of workmen occurred at the Regent’s Canal, of which the charterers were aware in time to have ordered the ship at Gravesend to proceed to one of the other places named. They did not do so, and owing to the strike the lay days were exceeded. Had they changed the destination the cargo could have been delivered without delay. *Held*, that the charterers were protected by the exception, and were not liable for demurrage.—*Bulman v. Fenwick*, 69 L.T. 651.
- (iii.) **P. D.**—*Charter-party—Time for Discharge—Despatch Money—Sundays and Fête Days excepted.*—A ship was chartered to carry a cargo of coals to be discharged at a given rate per day (Sundays and fête days excepted), and if sooner discharged, a payment to be made for every hour saved. *Held*, that Sundays and fête days were to be excluded in the computation both of the time allowed and of the time saved, so that despatch money was payable only on the difference between the number of hours actually occupied in discharge and the number of hours allowed by the charter-party.—*The Glendevon*, L.R. [1893] P. 269; 62 L.J. P. 123.
- (iv.) **H. L.**—*Collision—Overtaken Vessel—Third Vessel—Regulations, Arts. 20, 22, 23.*—Decision of C. A. (see Vol. 18, p. 134, iv.) affirmed.—*The Saragossa*, 69 L.T. 664.
- (v.) **H. L.**—*Collision—Fog—Regulations, Art. 8.*—Decision of C. A. (see Vol. 18, p. 100, i.) affirmed.—*The Lancashire*, 69 L.T. 663.
- (vi.) **P. D.**—*Collision—Principal Cause—Cross Cause—Practice—Security—Admiralty Court Act, 1861, s. 34.*—In a collision between the plaintiff’s and defendant’s ships, the former was damaged and the latter sank. The plaintiff issued a writ *in personam*. The defendant issued a writ *in rem* against the plaintiff’s vessel, and bail was given. The actions were consolidated, and the defendant made counter-claimant. The plaintiff applied for security. *Held*, that there was no power to grant the application.—*The Rougemont*, L.R. [1893] P. 275; 62 L.J. P. 121.

- (i.) **P. C.—Collision—Sunken Wreck—Port Authority—Liability—Maritime Lien.**—Where the owners of a sunken wreck remained in possession thereof, but the port authority undertook but neglected the duty of indicating its position so as to secure ships entering the port from the danger of colliding with the wreck, *held*, that neither the owners nor the wreck were liable for a collision which ensued. The control of the wreck had been legitimately transferred to the port authority, and in the absence of negligence on the part of the owners no maritime lien arose. The colliding ship having been navigated in circumstances of peril with reasonable care and skill, *held*, that it was not answerable for the collision.—*Owners of Utopia v. Owners of Primula*, L.R. [1893] A.C. 492; 62 L.J. P.C. 118.
- (ii.) **H. L.—Damage to—Jurisdiction—County Court—Collision with Dock Wall—County Courts Admiralty Jurisdiction Acts, 1868, s. 3; 1869, s. 4.**—*Held*, reversing the decision of C. A. (see Vol. 17, p. 148, i.) that the county court had jurisdiction to try an action for damage to a ship by collision with an object which is not a ship, such as a dock wall.—*Mersey Docks and Harbour Board v. Turner*, L.R. [1893] A.C. 468; 69 L.T. 680.
- (iii.) **C. A.—Insurance of Chartered Freight—Perils of the Sea—Breakdown—Material Fact—Non-Communication.**—By charter-party, a vessel was hired for three months, the payment of hire to cease, in case of a breakdown delaying the ship for more than twenty-four hours, until she should be efficient. By a slip initialled by the defendant, the risk to be covered was described as chartered freight for three months, diminishing one-third each month. A policy was executed, the perils being "perils of the seas," &c., in the usual form. The vessel had to be towed into harbour during the three months, owing to the shaft breaking. *Held*, that the damage was due to perils of the seas; that the loss due to the postponement by delay fell on the policy, although the plaintiff might ultimately earn the whole freight; and that although the defendant was not told of the clause of cesser, this was not a non-communication of a material fact, as such a clause is universal in a time charter, and the description on the slip was sufficient to give notice that the freight insured was freight under a time charter.—*The Bedouin*, L.R. [1894] P. 1.
- (iv.) **C. A.—Insurance—Lloyd's Policy—Memorandum—"Burnt."**—Decision of P. D. (See Vol. 18, p. 135, ii.) affirmed. *Held*, also, that it cannot be laid down as a definition applicable to every case that a ship is "burnt" within the meaning of the memorandum, whenever the injury by fire is sufficient to render her temporarily innavigable. Whether a partial burning constitutes a "burnt" ship or not is an inference to be drawn in each case from the particular facts.—*The Glentivet*, 69 L.T. 706; 42 W.R. 97.
- (v.) **P. D.—Salvage—Uncompleted Services—Surrender to other Salvors at Desire of Salvaged Ship—Compensation for Loss in not Completing Services.**—When a ship, having rendered salvage services, is in a position to render further valuable services but is superseded, at the desire of the salvaged ship, by another ship which is chosen to complete the service, the Court, in awarding salvage to the first salvors, will consider not only the services actually rendered, but those which they were able and ready to perform.—*The Maasdam*, 69 L.T. 659.

Solicitor:—

- (vi.) **Q. B. D.—Unqualified Person—Acting as Solicitor—Attachment.**—A person unqualified as a solicitor, who described himself as an architect and surveyor, was employed as agent to negotiate about a lease. There was an action against his employer with reference to the lease. He

charged his employer in his bill of costs with "at your request attending the Law Courts and paying the necessary Court fees incidental to putting in a personal appearance to the action. Bringing forms to you and obtaining your signature, and depositing same in accordance with standing orders. Obtaining and paying for copies in duplicate and forwarding same to Messrs C. and Sons, requesting statement of claim." *Held*, that the unqualified person had acted as a solicitor contrary to the Solicitors' Acts, but that no order should be made against him except that he should pay the costs of the application.—*In re Hall*; *e. p. Incorporated Law Society*, 69 L.T. 885.

See Practice, p. 55, iii.

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- (i.) **C. A.**—*Sale or Purchase of Stock—Contract Note not Sent to Principal—Right to Commission.*—A broker who has bought or sold securities on the Stock Exchange for his principal, is not prevented from recovering his commission on such purchases or sales by the fact that he has omitted to send to the principal any stamped contract notes in conformity with the Customs and Inland Revenue Act, 1888, s. 17, sub-s. 1 (1).—*Learoyd v. Bracken*, L.R. [1894] 1 Q.B. 114; 69 L.T. 668; 42 W.R. 196.

Tenant for Life:—

- (ii.) **C. A.**—*Shares—Reserve Dividend Fund—Capital or Income.*—Shares in a company were settled by will upon trust for A. for life. The company's articles provided that profits over 10 per cent. on the capital should be carried to a reserve fund. The company was wound up, and the assets distributable among the shareholders, including the reserve fund, was sufficient to pay a sum of £1 5s. 6d. per share above the amount paid up on each share. *Held*, that the tenant for life was not entitled to any part of the £1 5s. 6d., but that the whole thereof formed part of the capital of the trust fund.—*Armitage v. Garnett*, L.R. [1898] 3 Ch. 837; 69 L.T. 619.

Tithe:—

- (iii.) **C. A.**—*Extraordinary—Divided Ownership—Remedy of Owner Paying Whole Tithe—Commutation of Tithes Amendment Act, 1842, s. 16—Extraordinary Tithe Redemption Act, 1886, s. 4, sub-s. 5, s. 9.*—Decision of Q. B. D. (*see* Vol. 19, p. 26, ii.) affirmed.—*Simmonds v. Heath*, L.R. [1894] 1 Q.B. 29; 42 W.R. 122.
- (iv.) **Q. B. D.**—*Rates—Payment by Tenant—Allowance by Tenant—Deduction—Tithe Act, 1891—Interpretation Act, 1889, s. 88, sub-s. 2.*—The Tithe Act, 1891, introduces a new procedure for the recovery of rates on tithes, and the Interpretation Act, 1889, does not keep alive the old procedure. A landlord cannot deduct from the tithe payable to the tithe-owner the amount of rates actually paid by the tenant and allowed to him in paying his rent, even though the rates were due in respect of tithes before the Tithe Act, 1891.—*Jones v. Potts*, 61 L.T. 314.

Trade Mark:—

- (v.) **Ch. D.**—*Register—Rectification—Calculated to Deceive—Person Aggrieved—Patents, &c., Act, 1888, s. 90.*—B. carried on business in London as a dealer in window glass, which he purchased in Belgium, and shipped to the colonies. In 1876 he registered as a trade mark the device of a star, and his glass was known in the trade as "Star Brand." The respondents, a Belgian glass manufacturing company, in 1890 registered as a trade mark for window glass the words "Red Star Brand." They did not deal directly with the colonies, though

they sent glass to England in cases marked with a red star. *Held*, that the respondents' mark was calculated to deceive, that B. was a "person aggrieved," and was entitled to have the mark expunged. *Held*, also, that an injunction limited to user in the colonies would not have been a sufficient protection.—*In re Trade Mark of La Société Anonyme des Verreries de l'Etoile*, L.R. [1894] 1 Ch. 61; 69 L.J. Ch. 56; 69 L.T. 708.

- (i.) **Ch. D.—Similarity to Registered Mark—Disclaimer—Calculated to Deceive—Patents, &c., Acts, 1883, ss. 64, 72, sub-ss. 2, 78; 1888, s. 10, sub-ss. 2, 14, 15.**—Where the sole resemblance between a mark submitted for registration and one already registered consisted in the fact that both bore the inscription "Unco Guid," but any right to the exclusive use of these words had in each case been disclaimed, and the mark submitted for registration had been in use for several years under the erroneous belief that it was already registered, the Court directed the mark to be registered, being of opinion that it was not calculated to deceive, and that the *bona fides* of the applicant was shown by the circumstances.—*In re Loftus' Trade Mark*, 68 L.J. Ch. 52; 69 L.T. 690.

Tramway :—

- (ii.) **Ch. D.—Parliamentary Deposit—Repayment—Evidence of Abandonment—Parliamentary Deposits and Bonds Act, 1893, s. 1.**—The Court will not, on the abandonment of a tramway, order the payment out of the parliamentary deposit, except on production of notice of abandonment published by the Board of Trade in accordance with the Tramways Act, 1870, s. 18, unless it appears beyond all dispute that such notice cannot be forthcoming.—*In re Dudley and Kingswinford Tramways*, 69 L.T. 711; 42 W.R. 126.

Trustee :—

- (iii.) **C. A.—Breach of Trust—Advance on Mortgage—Insufficient Security—Consent of Tenant for Life—Trustee Act, 1888, ss. 4, 5, 6, 8.—See Vol. 18, p. 188, ii.** Decision of Ch. D. affirmed, but *held*, that the life interest of the tenant for life in the whole trust estate could not be impounded to indemnify the defendants, but that they should retain the interest on so much as was required to make good the deficiency on the mortgage.—*Somerset v. Earl Poulett*, 68 L.J. Ch. 41; 42 W.R. 145.
- (iv.) **Ch. D.—Maintenance—Discretion of Trustees—Interference with.**—A testator directed that after the decease or second marriage of his widow L., his trustees should apply the whole, or such part as they should think fit, of the income of any child's share of the testator's residuary estate for or towards such child's maintenance, and appointed L. and four others to be trustees. L. married again, but the infant children of her marriage with the testator continued to live with her. The infants applied that the trustees might be ordered to make an allowance for their maintenance. *Held*, that there was no absolute trust to apply any part of the income towards such maintenance, but a discretionary trust carrying an obligation to entertain and consider the question, and a discretion in the exercise of the duty; and that the Court would not overrule the discretion of the trustees, who had in the honest exercise of their discretion refused to make an allowance.—*Bryant v. Hickley*, 42 W.R. 183.

See Limitations, p. 48, iii.

Vendor and Purchaser :—

- (v.) **C. A.—Conditions of Sale—Clean Title—Conveyancing Act, 1881, s. 70.**—Land was sold under an order of the Court. The conditions gave notice that it was subject to mortgages to a large amount, that the

first mortgagees would join in the conveyance and release his charge, but that no subsequent incumbrance would be released, and that the purchaser should not require the concurrence of any person having only an equitable interest bound by the order for sale, other than the vendor. The vendors tendered a conveyance to the purchaser in fee discharged from the first mortgages but, "subject to such equity of redemption as is not by these presents released." This restriction was added by the first mortgagees who were not before the Court. *Held*, that the purchaser was entitled to a conveyance of an estate in fee simple free from incumbrances, and that in default he was not bound to complete.—*Mostyn v. Mostyn*, L.R. [1893] 3 Ch. 376; 62 L.J. Ch. 959; 42 W.R. 16.

- (i.) **C. A.—Covenants for Title—Construction.**—A vendor's covenants for title are to be construed literally, and without any restrictions, which are not expressly mentioned. Therefore where the covenants are wide enough to apply to a defect in the title which is disclosed by a recital in the conveyance, they do so operate in law.—*Page v. Midland Railway Co.*, L.R. [1894] 1 Ch. 11; 42 W.R. 116.

Waterworks:—

- (ii.) **H. L.—Sale to Local Authority—Basis of Valuation—Price.**—Decision of C. A. (See Vol. 18, p. 104, iii.) affirmed.—*Stockton and Middlesborough Water Board v. Kirkleatham Local Board*, L.R. [1893] A.C. 444; 69 L.T. 661.

Will:—

- (iii.) **Ch.—Construction—Contingent Remainder—Failure of Particular Estate—Direction to pay Debts.**—A testatrix, who died in 1875, after directing her debts to be paid by her executors, H. and W., devised a freehold house to H. and W. upon trust to allow H. to use the same for his life, and after his death upon trust for his children as he should appoint, and in default of appointment in trust for such of his children as should attain twenty-one. H. did not appoint the house, and died leaving infant children. *Held*, that the direction to pay debts showed that the trustees were not to be mere devisees to uses, but that the testatrix intended them to have the legal estate, and that consequently the estates given to the children were equitable, and did not fail for want of a particular estate.—*Brooke v. Brooke*, L.R. [1894] 1 Ch. 43; 42 W.R. 186.
- (iv.) **C. A.—Construction—Erroneous Recital.**—A testatrix, being absolutely entitled under a will to one-third of a sum of £100,000, by her will after reciting (as the fact was) that she had settled £16,000 part thereof in favour of A., and, erroneously, that she had settled one undivided moiety of the residue of the said one-third in favour of B. and her family, gave the other undivided moiety to C., and gave to him all the residue of her estate and effects. *Held*, that the erroneous recital did not amount to a bequest in favour of B. and her family, and that, as there was no indication of any intention to exclude the fund the subject of such recital from the residuary bequest, it passed to C., and did not fall to the next-of-kin as undisposed of.—*Paton v. Ormerod*, L.R. [1893] 3 Ch. 348; 69 L.T. 399.
- (v.) **C. A.—Construction—Share of Residue—Revocation of Gift by Codicil.**—A testator gave his residuary estate upon trust as to two-fifth parts for his daughters M. and A., and all other daughters born in his lifetime equally. By a codicil he declared that the share given to M. should be restricted to a life interest only, and that upon her death it should fall into and form part of his residuary estate. *Held*, that the share of M. after her death did not pass to the next-of-kin as

undisposed of, but went to the other residuary legatees.—*Palmer v. Anscorth*, L.R. [1893] 3 Ch. 367; 62 L.J. Ch. 988; 69 L.T. 477; 43 W.R. 151.

- (i.) **Ch. D.—Legacy—Contingent—Severance—Interest.**—Testator gave the residue of his property to trustees upon trust to pay the income to his wife for life or until second marriage, and subject to such trust he directed his trustees to raise and pay to each of his sons J. and F., who should be living at his death, and should attain the age of twenty-one years, the sum of £5,000, and he gave his residue on certain trusts. The widow died, and F. afterwards attained the age of twenty-one. *Held*, that the legacy was contingent. *Held*, also, that the legacy must be severed from the residue as from the death of the widow, but that such severance was not for the benefit of the legatee, but of the residuary legatees, to facilitate the distribution of the estate, and that the legacy therefore did not carry interest.—*Inman v. Rolles*, L.R. [1893] 3 Ch. 518; 62 L.J. Ch. 940; 69 L.T. 374; 42 W.R. 156.
- (ii.) **Ch. D.—Remoteness—Invalid Trust for Sale—Conversion.**—A gift to a living person A., if living at the end of forty-nine years, or to her issue if she be then dead and leaving issue, is not too remote. Trust for sale of land at the end of forty-nine years, and gift of the proceeds to a class ascertainable within the limits of the rule against perpetuities. *Held*, that the gift was good, but the trust for sale void, and, therefore, that the beneficiaries took the property as real estate.—*Bowen v. Churchill*, L.R. [1893] 3 Ch. 421; 63 L.J. Ch. 54; 42 W.R. 24.
- (iii.) **P. D.—Incorporation of Documents.**—Testator left a will of May, 1890, and two codicils. By the will he gave an annuity to his wife, and devised and bequeathed real and personal estate to his trustees upon trust, after payment of debts, &c., to set apart a sum to provide the annuity, which setting apart he directed "to consist of funds or investments belonging to me at my decease, and which the trustees will find noted by me for the purpose." After his death a holograph paper was found, purporting to be instructions to the trustees as to the securities which were to be set aside to provide the annuity. The paper was undated, and was inclosed in an unsealed envelope on which was written by the testator, "Instructions to my executors, June 5, 1890." The codicils were executed in 1891, and did not refer to the instructions. *Held*, that as the language of the will did not refer to the paper as existing at the date of the will, the codicils could not have the effect of incorporating it; and that it must be excluded from probate.—*Durham v. Northen*, 69 L.T. 691.
- (iv.) **P. D.—Probate—Clerical Error in Engrossment—Probate with Blank Space.**—A will was engrossed from a draft approved by the testatrix. The engrossing clerk copied the number of one house twice over, and omitted the number of another house. The mistake was not discovered before execution. The Court granted probate with the duplicate number struck out, and a blank in place thereof, but declined to insert the correct number.—*In the goods of Walkeley*, 69 L.T. 419.
- (v.) **C. A.—Probate—Revocation—Two partly Inconsistent Wills—Cancellation of Later Will—Revival of First Will.**—Testator by will gave all his property to J., and appointed her sole executrix. By a second will he devised his real estate to E., and appointed her executrix, and did not revoke the first will. He cancelled the second will. *Held*, that the first will was partly revoked by the second, and that the revoked part was not revived by the cancellation of the second will; and that probate must be granted of the first will limited to such part of the testator's property as was not comprised in the second will, and that

there was an intestacy as to the part comprised in the second will.—*In the goods of Hodgkinson*, L.R. [1893] P. 339; 62 L.J. P. 116; 69 L.T. 540.

- (i.) **P. D.—Probate—Torn Will—Probate on giving Security.**—A testator, while suffering from brain disease, tore up his will. The pieces were pasted together, and the widow applied for probate with the assent of one of the two sons, the other being absent from England. *Held*, that probate might be granted on the widow giving security to the extent of the absent son's interest in case of intestacy.—*In the goods of Hine*, L.R. [1893] P. 282; 69 L.T. 458.
- (ii.) **P. D.—Probate—Words after Signature.**—A will was written principally on the first page of a printed form, but the last sentence was continued and finished on the second page, the signatures of testator and witnesses being at the foot of the first page. The Court granted probate of the will as contained on the first page, omitting the words on the second page.—*In the goods of Anstee*, L.R. [1893] P. 283; 42 W.R. 16.



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Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR FEBRUARY, MARCH, AND APRIL, 1894.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration:—

- (i.) **P. D.**—*Grant of—Fund in Name of Deceased—Property of Applicant—Notice—Court of Probate Act (20 & 21 Vict., c. 71), s. 73.*—Moneys belonging to the mother of the deceased were, under a misapprehension, paid into a savings bank account standing in the name of the deceased, who died upwards of six years ago. Some of the moneys were paid in after the death of the deceased. Her husband knew of the account but did not take out administration, and left the country for America. *Held*, on motion by the mother, that the Court would not grant her letters of administration without notice to the husband.—*In the goods of Rusch*, 42 W.R. 304.
- (ii.) **P. D.**—*Grant ad Colligenda Bona—Italian Subject—Intestacy—Relatives Abroad—Infant Child.*—A domiciled Italian died intestate, leaving in England an infant child, whom he had formally declared, in accordance with Italian law, to be his lawful child. The deceased left brothers and a sister resident abroad, and possessed property in this country, some of which was perishable. The Court made a grant *ad colligenda bona* to the Italian vice-consul.—*In the goods of Migazzo*, 70 L.T. 246.
- (iii.) **Ch. D.**—*Legacies Vested, but not Payable—Discretionary Annuity—Funds Set Apart—Income of—Tenant for Life and Remainderman.*—The income of a fund set apart to answer a legacy vested, but not presently payable, falls into the residue as capital, and must be treated as such as between the tenant for life of the residue and the remainderman. The unapplied income of a fund set apart to answer an annuity payable at the discretion of trustees belongs to the tenant for life of the residue as income.—*Peacock v. Lucas*, 63 L.J. Ch. 229; 70 L.T. 122.

- (i.) **Ch. D.**—*Specific Bequest to Debtor—Retainer by Executors.*—Specific bequest of the profits of a business to be carried on by the executors. The executors may retain the profits against a debt due from the legatee to the estate.—*Taylor v. Wade*, 42 W.R. 873.
- (ii.) **P. D.**—*Will Annexed—Testatrix Deserted by Husband—Citation.*—Upon an application for administration with the will annexed of a woman who had been deserted by her husband fifteen years before her death, and had not heard of or from him since the desertion, *held*, that the husband might be passed over without citation.—*In the goods of Shoosmith*, L.R. [1894] P. 23; 63 L.J. P. 64.

Adulteration:—

- (iii.) **Q. B. D.**—*Article of Food—Baking Powder—Mixture Injurious to Health—Sale of Food and Drugs Act, 1875, s. 8.*—The appellant sold a packet of baking powder composed of 20 per cent. of bicarbonate of soda, 40 per cent. of ground rice, and 40 per cent. of alum, the last ingredient being injurious to health. *Held*, that the baking powder was not an article of food, and that the sale was not an offence within the section above mentioned.—*James v. Jones*, L.R. [1894] 1 Q.B. 304; 63 L.J. M.C. 41; 42 W.R. 400.
- (iv.) **Q. B. D.**—*Certificate of Analysis—Sufficiency—Unauthorized Addition—Sale of Food and Drugs Act, 1875, ss. 6, 18.*—The certificate given by a public analyst of the result of his analysis, need not set out the constituent parts of the sample analysed, where the case is not one of adulteration; it is sufficient that it states the "result." The "observations" which follow the result, in the form of certificate given in the Act, are only to be made where the case is one of adulteration; but the addition, in cases where adulteration is not charged, of "observations" amounting only to an expression of opinion, and not to a finding of fact, though unauthorized and improper, will not necessarily vitiate the certificate.—*Bakewell v. Davis*, L.R. [1894] 1 Q.B. 296; 69 L.T. 832.
- (v.) **Q. B. D.**—*Prosecution—Summons—Insufficient Particulars of Offence—Sale of Food and Drugs Act, 1879, s. 10.*—The omission from the summons in a prosecution under the Act above-mentioned of the particulars of the offence with which the defendant is charged does not deprive the justices of jurisdiction, but merely entitles the defendant to an adjournment if the justices should consider that he is prejudiced by the omission.—*Neal v. Devenish*, L.R. [1894] 1 Q.B. 544; 63 L.J. M.C. 78.
- (vi.) **Q. B. D.**—*Spirits—Mixture of Water—Certificate—Sale of Food and Drugs Acts, 1875, ss. 6, 21; 1879, s. 6.*—A certificate of the result of an analysis of a sample of rum, stated "I find that the sample contained an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the sample is not a sample of genuine rum." *Held*, that the certificate was insufficient in that it did not state the proportion of water contained in the rum, and could not support a conviction.—*Newby v. Sims*, L.R. [1894] 1 Q.B. 478; 70 L.T. 105.

Arbitration:—

- (vii.) **Q. B. D.**—*Misconduct of Arbitrator.*—In an arbitration on matters in dispute between the landlord and the outgoing tenant of a farm, the arbitrators having taken evidence held a meeting on the farm, and received information from the tenant, without the knowledge or consent

of the landlord. *Held*, that their conduct was improper, and that the award must be set aside.—*In re Arbitration between Gryson and Armstrong*, 70 L.T. 106.

Attachment:—

- (i.) **Ch. D.**—*Debtors Act*, 1869, s. 4, sub-s. 3—*Partner—Fiduciary Capacity*.—One partner receiving assets of the partnership on account of himself and co-partners, is not liable to imprisonment as a person acting in a fiduciary capacity.—*Piddocke v. Burt*, L.R. [1894] Ch. 343; 63 L.J. Ch. 246; 42 W.R. 248.

Baker:—

- (ii.) **Q. B. D.**—*Obligation to Provide Scales in Shop—No Summary Penalty—Bread Act*, 1822, ss. 8, 9.—The provisions of sect. 9 which provide a summary penalty for neglect to carry a beam and scales in carts delivering bread, cannot be imported into sect. 8 which imposes an obligation to provide a beam and scales in a baker's shop, but imposes no summary penalty for failure to do so.—*Reg. v. Aerated Bread Co.*, 63 L.J. M.C. 67.

Banker:—

- (iii.) **C. A.**—*Bank of England—Composition for Loss of Right to issue Bank-Notes—Sale of Business to Company—Bank Charter Act*, 1844, ss. 23, 24.—Where a banker, who is receiving an annual payment from the Bank of England as compensation for the loss of the right to issue bank-notes, ceases to carry on business, the annual payment ceases to be recoverable. Where four banks, two in London and two in the provinces, were purchased by a joint-stock company, one of the provincial banks being entitled to such an annual payment, and the businesses of the four banks were carried on in the same places as before by the company in its own name, *held*, that the banks must be taken to have ceased to carry on their businesses, and that the purchasing company was not entitled to receive the annual payment.—*Prescott, Dimsdale, Cave, Tugwell & Co. v. Bank of England*, L.R. [1894] 1 Q.B. 351; 70 L.T. 7.

Bankruptcy:—

- (iv.) **P. C.**—*Act of—Bill of Sale—Fraudulent Assignment—Jurisdiction of Court*.—A bill of sale, including the whole of a trader's property, given as security for an advance, with a promise of further assistance, made in good faith, to enable him to carry on his business, and in the reasonable belief that he will thereby be enabled to do so, is not a fraudulent assignment and an act of bankruptcy, though the trader was in fact insolvent at the time. The Court of Bankruptcy in Jamaica has power to revoke a provisional order, or to annul an adjudication under sect. 151 of the Bankruptcy Law, 1879, without going to the Court of Appeal.—*Administrator-General of Jamaica v. Lascelles*, 70 L.T. 179; 42 W.R. 416.
- (v.) **Q. B. D.**—*Act of Bankruptcy—Notice of intention to Suspend Payment—Costs of Solicitor and Accountant—Bankruptcy Act*, 1883, ss. 41, 43, 44.—The debtor, on the advice of his solicitor, posted a circular to his creditors, stating that his "financial difficulties" made it desirable for him to consult his creditors as to his position. The circular also stated that a statement was being prepared by accountants to be submitted to the creditors. A meeting of the creditors was afterwards held, at which a statement was submitted, and a receiving order was afterwards made. Between the dates of the circular and of the receiving

order the accountant received moneys on account of the debtor, out of which he paid the solicitor a sum of £130 on account of costs, and retained £100 for the preparation of the statement. *Held*, that the circular was an act of bankruptcy, and that the sums of £130 and £100 must be repaid to the trustee as payments made with notice of an act of bankruptcy. Though a trustee in bankruptcy may adopt and pay for services rendered to a bankrupt after notice of an act of bankruptcy, where such services have resulted in benefit to the estate commensurate with the services, he must be very strict in the application of the rule.—*In re Simonson*; *e. p. Ball*, L.R. [1894] 1 Q.B. 433; 70 L.T. 32.

- (i.) **C. A.**—*Appeal—Trial—Extension—Bankruptcy Rules*, 1886, rr. 130, 351.—An order of the Court was signed by the registrar and sealed on December 1st, and was filed next day. Notice of appeal was served on December 23rd. *Held*, that the order was perfect when signed and sealed, and that the appeal was out of time. *Held*, also, that the mistake of the appellant's solicitor was not such a special circumstance as would enable the Court to extend the time for appealing.—*E. p. The Trustee*; *in re Helsby*, 70 L.T. 144.
- (ii.) **Q. B. D.**—*Assets—Earnings—Partner in Firm of Dentists—Personal Skill*.—The earnings and profits of a partner in a firm of dentists do not fall within the rule which saves professional and personal earnings from passing to the trustee. *Semle*, that the fact that the bankrupt had himself mortgaged his share of the profits and earnings, deprives them of the character of professional earnings.—*Collins v. Ford*, 63 L.J. Q.B. 178; *e. p. Rogers*; *in re Collins*, L.R. [1894] 1 Q.B. 425; 70 L.T. 107.
- (iii.) **Q. B. D.**—*Administration of Deceased Debtor's Estate—Discretion—Bankruptcy Act*, 1883, s. 125.—The Court has a wide discretion as to granting a creditor an administration of the estate of a deceased insolvent debtor. An action was commenced against a firm for money lent, and one of the partners died on the day of service of the writ. Judgment was obtained against the survivors. *Held*, that such judgment did not wipe out the liability of the estate of the deceased partner, and that a petition by the creditor for the administration of the estate of such partner ought to be allowed, but that the proceedings ought, under the circumstances, to be transferred to London, the official receiver being appointed trustee.—*E. p. Ashworth*; *in re Outram*, 69 L.T. 767.
- (iv.) **Q. B. D.**—*Annulment—Bankruptcy Act*, 1883, s. 35, sub-s. 1.—A friend of the bankrupt bought up what were alleged to be all his debts, amounting to £1,654, for a small sum, and then assigned them back to the bankrupt for £1,654, which sum was provided by another friend. On an application to annul the bankruptcy, the bankrupt and the witnesses to the deeds filed affidavits, but the bankrupt did not attend, though notice of cross-examination had been given to him. *Held*, that this did not amount to payment in full of all his debts so as to entitle him to annulment; and that there was not sufficient proof that all the bankrupt's debts had been bought up.—*E. p. Official Receiver*; *in re Burnett*, 42 W.R. 368.
- (v.) **C. A.**—*Appeal—Notice to Registrar—Irregularity—Extension of Time—Bankruptcy Act*, 1883, ss. 104 (d), 105 (4), 143—*Bankruptcy Rules*, 1886 and 1890, r. 132.—In an appeal from an order in bankruptcy made in a county court, the Court ought not, except under special circumstances, to extend the time for giving notice of appeal to the registrar of the county court; nor ought the omission to give such notice be treated as an irregularity which can be cured.—*E. p. Spanish Corporation*; *in re Vitoria*, L.R. [1894] 1 Q.B. 259.

- (i.) **Q. B. D.—Bill of Sale—Payment by Instalments.**—A bill of sale was given to secure the payment of £200, with interest at 6d. in the pound per month, the principal and interest to be paid by weekly payments of £2 6s. 2d. After receiving order made against the borrower, of which the lender was unaware, a second bill of sale was given in substitution for the first. *Held*, that the second bill of sale did not cancel the first, and that, as the statutory form contemplated payment of both principal and interest by instalments, and did not define the number of instalments, the first bill of sale was not void.—*Bargen v. Hasluck*, L.R. [1894] 1 Q.B. 444; 69 L.T. 764.
- (ii.) **Q. B. D.—Consolidation of Proceedings—Separate Petitions by Partners—Bankruptcy Act, 1883, s. 112.**—The Court has power to direct the consolidation of the proceedings under separate petitions by members of a partnership, even though the partnership had been dissolved at the date of the petitions, there being joint assets and joint liabilities still subsisting.—*E. p. Official Receiver; in re Abbott*, L.R. [1894] 1 Q.B. 442; 63 L.J. Q.B. 253; 69 L.T. 765.
- (iii.) **C. A. & Q. B. D.—Disqualification—School Board Election—Retrospective—Bankruptcy Act, 1883, s. 32.**—The section disqualifying a bankrupt from being elected a member of a school board is not retrospective, and does not apply to persons adjudged bankrupt before the date of the Act.—*Bourke v. Nutt*, 70 L.T. 25; 42 W.R. 888.
- (iv.) **C. A.—Estate of Bankrupt—Following Trust Moneys.**—Trustees authorised a banking firm to receive £1,600, the proceeds of debentures of a company which were being paid off. The bank knew that the moneys were trust moneys. Having other transactions with the company the bank did not actually receive the £1,600, but balanced its accounts with the company, and credited the trustees with £1,600. The bank daily transferred its receipts to London, and on the day of suspension of payments had a balance to its credit in London. *Held*, that there was nothing in the above transactions to show a receipt, either by the bank, or by its London agents, of any actual sum of £1,600, so as to enable it to be followed as trust money.—*E. p. Blane; in re Hallett*, 63 L.J. Q.B. 67; 42 W.R. 305.
- (v.) **Q. B. D.—Married Woman—Separate Trade—Married Women's Property Act, 1882, s. 1, sub-s. 5.**—To bring a married woman within the section above-mentioned, and make her subject to the bankruptcy laws, it must be proved that she is carrying on a trade separately from her husband, and that the property in respect of which she is trading is her separate property. A married woman cannot be made subject to the bankruptcy laws in respect of a business which is by reason of partnership or otherwise under her husband's control; nor where the husband is liable to be sued, although as between him and his wife the property derived from the trade may be the wife's property entirely.—*In re Helsby*, 69 L.T. 864; 42 W.R. 218.
- (vi.) **Q. B. D.—Money paid to Solicitor—Defence on Criminal Charge—Right to Retain.**—A solicitor agreed in writing with a person charged with murder to conduct his defence and provide the necessary expenses for a lump sum, which was paid. Some days afterwards the client committed an act of bankruptcy, of which the solicitor had notice, and a receiving order was made. The solicitor conducted the defence. The trustee applied for the return of the money. *Held*, that the agreement was legal and binding, and that the solicitor was entitled to retain the money.—*In re Charwood; e. p. Masters*, L.R. [1894] 1 Q.B. 643.

- (i.) **Q. B. D.—Partners—Separate Estate—Proof by Solvent Partner against Insolvent.**—Where a partnership is insolvent, and a proof is tendered by a solvent partner against the separate estate of an insolvent partner in respect of a separate debt, it may be admitted, although the dividend to be received from the insolvent's estate will increase the surplus which will eventually go from the solvent's estate to pay the joint debts of the partnership.—*In re Head*, L.R. [1894] 1 Q.B. 638; 63 L.J. Q.B. 206; 70 L.T. 35.
- (ii.) **Q. B. D.—Preferential Payments—Debt due to Friendly Society by Officer—Friendly Societies Act, 1875, s. 15 (7).**—The trustees of a friendly society are entitled, upon the bankruptcy of the Secretary, who was by the rules entitled to receive certain moneys due to the society, though bound to hand them over at once to the treasurer, to be paid the balance due from him in preference to other creditors; such moneys are in his possession by virtue of his office, though he ought to have handed them over at once to the treasurer.—*E. p. The Trustee*; *in re Welch*, 42 W.R. 820.
- (iii.) **Q. B. D.—Proof—Debt proved in former Bankruptcy—Revival of.**—A debtor, in order to secure a present advance, agreed to revive a debt due to the lender, which had been proved for in a former bankruptcy, and gave promissory notes for the amount of the old debt. The debtor again became bankrupt, and the lender sought to prove on the notes. *Held*, that the promise to revive and pay the old debt was not illegal; and that, as there was nothing in the circumstances of the case to justify the Court in supposing that the borrower did not intend to pay the old debt, the proof ought to be admitted.—*In re Aylmer*; *e. p. Aylmer*, 70 L.T. 244.
- (iv.) **Q. B. D.—Solicitors' Costs—Employment before Petition.**—A firm employed solicitors to investigate their affairs, and placed in their hands £50 to cover costs. The solicitors employed an accountant to examine the books of the firm, and paid his charges. The accountant was engaged before the solicitors had notice of a petition, but his charges were paid after such notice. The solicitor afterwards incurred costs in resisting the petition and in rendering other services to the debtors after receiving order. *Held*, that the solicitors could retain the accountant's charges out of the £50, because they had pledged their credit to the accountant before notice of the petition. *Held*, that they could not retain any part of their own costs.—*E. p. Official Receiver*; *in re Whitlock*, 68 L.J. Q.B. 245; 70 L.T. 84.
- (v.) **Q. B. D.—Transfer of Action—Foreclosure—Bankruptcy Act, 1883, s. 102, sub-s. 4.**—A trustee in bankruptcy applied for the transfer for trial to the judge in bankruptcy of two foreclosure actions commenced against the bankrupt, the mortgagor, by originating summons in the Chancery Division, in which the trustee had been joined as a co-defendant. *Held*, that as there was no question of priorities, but only of the validity of the mortgages, in which the trustee's title could not be better than the bankrupt's, the transfer ought not to be made.—*E. p. Kemp*; *in re Champagné*, 69 L.T. 763.
- (vi.) **Q. B. D.—Undischarged Bankrupt—Property acquired by—Second Bankruptcy—Right to Property—Bankruptcy Act, 1883, s. 44.**—An undischarged bankrupt acquired some property by trading, and became bankrupt a second time. The trustee under the first bankruptcy failed to assert his title to the property until after the second bankruptcy. *Held*, that the title of the trustee under the second bankruptcy had attached, and that the property must be administered by him in the second bankruptcy, without prejudice to the claim, if any, of the creditors under the first bankruptcy to rank for proof.—*E. p. Dickenson*; *in re Clark*, 70 L.T. 284.

Bill of Sale:—

- (i.) **C. A.—Construction of Covenants—Payment of Interest—Production of Receipt for Rent, &c.—Bills of Sale Act, 1882, s. 7.**—A bill of sale contained a covenant to repay the money lent by equal yearly instalments, and a covenant to pay interest on the "said sum" at a given rate. It also contained a covenant to produce on demand the last receipt for rent, rates, and taxes, followed by a proviso that the chattels should not be liable to seizure for any cause other than those specified in the section above-mentioned, which were set out in the deed. *Held*, that the covenant to pay interest must be construed to refer to interest on the principal sum due from time to time. *Held*, also that the covenant to produce receipts must be read with the qualification that the goods could only be seized if the failure to produce the receipts should be without reasonable cause.—*Weardale Coal and Iron Co. v. Hodson*, L.R. [1894] 1 Q.B. 598.
- (ii.) **C. A.—Defeasance on Condition—Collateral Security—Bills of Sale Acts, 1878, s. 10, sub-s. 3; 1882, s. 8.**—A. and his wife assigned chattels to B. to secure payment of £300 with simple interest. On the same day and as part of the same transaction, A.'s wife assigned to B., by way of mortgage, certain reversionary interests to secure £300 with compound interest. *Held*, that the mortgage operated as a defeasance, and not being incorporated with the bill of sale rendered it void.—*Edwards v. Marcus*, L.R. [1894] 1 Q.B. 587; 70 L.T. 182.
- (iii.) **Ch. D.—Description of Grantor.**—A person leading the ordinary life of a country gentleman, but being a "sleeping" partner in several businesses, described himself in a bill of sale as "a gentleman of no occupation." *Held*, that the description was correct, and the bill of sale good.—*Feast v. Robinson*, 70 L.T. 168.
- (iv.) **Ch. D.—Mortgage of Land and Machinery.**—Freehold and leasehold hereditaments were mortgaged by deed, together with all the fixed and movable plant, machinery, fixtures, implements, and utensils then and thereafter on or about the premises. The deed contained a covenant by the mortgagor to keep the buildings insured, and also the plant and machinery. *Held*, that as the deed was not registered as a bill of sale, it was void as to the machinery, and that the mortgagee could not sell the machinery either together with or apart from the land.—*Small v. National Provincial Bank of England*, 42 W.R. 878.
- (v.) **Q. B. D.—Weekly Instalments—Statutory Form.**—A bill of sale for £200 and interest at 6d. per pound per month, provided for the payment of principal and interest by weekly payments of £2 6s. 2d. There was no default clause. *Held*, that the bill of sale was not invalid for want of compliance with the statutory form, although the number of weekly instalments was not specified.—*Hasluck v. London and Westminster Loan and Discount Co.*, 65 L.J. Q.B. 209.
- (vi.) **Q. B. D.—Payment by Instalments—Default—Power to Seize—Bills of Sale Act, 1882, s. 7.**—A bill of sale made the amount secured, with interest, payable by instalments, but did not provide for the seizure of the whole of the goods on default in payment of one instalment. An instalment being in arrear, the grantee, after demand of payment, seized the whole of the goods. A receiving order was subsequently made. *Held*, that the grantee was entitled to possession of the goods on default in payment of one instalment, and that the seizure was rightful.—*E. p. Woolfe; in re Wood*, L.R. [1894] 1 Q.B. 605; 70 L.T. 282.
- (vii.) **C. A.—Term for Maintenance of Security—Covenant to Replace Chattels Worn Out—Bills of Sale Act, 1882, ss. 4, 6, 9.**—A covenant in a bill of sale of furniture which is specifically described in a schedule, to the

effect that the grantor would replace articles damaged or worn out with others of equal value to be included in the security, is a term "for the maintenance of the security," and is not a deviation from the statutory form.—*Seed v. Bradley*, L.R. [1894] 1 Q.B. 319; 70 L.T. 214; 42 W.R. 257.

See Bankruptcy, p. 73, i.

Boiler :—

- (i.) **Q. B. D.**—"*Used Exclusively for Domestic Purposes*"—*Boiler Explosions Acts*, 1882, s. 4; 1890, s. 2.—A boiler used to heat offices or business premises upon which the owner does not reside, and also to supply hot water for cleaning the offices and for the household purposes of a resident caretaker, is exempted from the operation of the Acts above-mentioned.—*Smith v. Müller*, L.R. [1894] 1 Q.B. 192; 70 L.T. 170.

Building Society :—

- (ii.) **Ch. D.**—*Dissolution—Priority*.—The rules of a building society fixed the amount of each share at £12, and provided for the withdrawal of unadvanced members on notice. In consequence of losses the rules were altered and the shares reduced to £10. A deed of dissolution was afterwards executed and registered. *Held*, that unadvanced members were bound by the rules from time to time, and therefore by the reduction of the shares, but that members who had given notice to withdraw, and whose notices had matured before the date of the deed of dissolution, were entitled to be paid in priority according to the dates of their notices.—*Barnard v. Tomson*, L.R. [1894] 1 Ch. 375; 70 L.T. 306.
- (iii.) **C. A.**—*Withdrawal of Deposits—Available Balance Insufficient—Action*.—The rules of a building society provided that if the available balance in hand should be insufficient to pay all depositors wishing to withdraw, they should be paid in rotation according to the priority of their notices. A depositor gave notice, and the balance being insufficient to pay him, brought an action against the society. *Held*, that the fact that the available balance was insufficient was an answer to the action.—*Brett v. Monarch Building Society*, L.R. [1894] 1 Q.B. 367; 63 L.J. Q.B. 287; 70 L.T. 146; 42 W.R. 209.
- (iv.) **Q. B. D.**—*Winding-up—Compulsory Reference—City of London Court—Building Societies Act*, 1874.—In the winding-up of a building society under the Act, the judge of the City of London Court, without the consent and against the wishes of the parties to the application, referred an issue to a layman, imposed terms as a condition precedent to the hearing of such reference, and subsequently discharged his own order of reference owing to the refusal of either party to comply with the terms. *Held*, that as the judge had no power to order a reference except by consent, and as he could not of his own motion vary or discharge a final order of his own, he had acted in excess of jurisdiction, and that a writ of prohibition ought to issue.—*In re London Scottish Permanent Building Society*, 63 L.J. Q.B. 112.

Burial Ground :—

- (v.) **C. A.**—*Disused—Building on—Metropolitan Open Spaces Act*, 1881, s. 1—*Open Spaces Act*, 1887, s. 4—*Disused Burial Grounds Act*, 1884, s. 3.—Decision of Ch. D. (see Vol. 19, p. 35, iv.) affirmed.—*Ponsford v. Newport District School Board*, L.R. [1894] 1 Ch. 454; 42 W.R. 358.

Charity :—

- (i.) **C. A.**—*Gift to Foreign Objects—Public Policy.*—A charitable bequest of a discretionary private nature in favour of the deserving poor persons of a foreign town, which can be carried out according to the law of the country in which such town is situated, is not void on the ground of public policy, nor is it contrary to the Mortmain and Charitable Uses Act, 1888.—*Freund v. Steward*, 69 L.T. 819.
- (ii.) **Ch. D.**—*Mortmain—Corporation Stock.*—Debenture stock issued by a municipal corporation was charged upon the borough fund and "the revenues derived from all the landed property" of the corporation. *Held*, that it was pure personalty, and might be bequeathed to a charity.—*Emsley v. Mitchell*, 68 L.J. Ch. 254; 42 W.R. 375.

Colonial Law :—

- (iii.) **P. C.**—*Ontario—Warehouse Receipts—Negotiable Instrument.*—Warehouse receipts given by a person who is not, from the nature of his business, a custodian for others as well as himself, are not negotiable instruments within the Mercantile Amendment Act of Ontario. For the purposes of the Canadian Bank Act, warehouse receipts given by a saw miller, although his business may be confined to the manufacture of his own timber, are negotiable. The British North America Act, 1867, gives the Parliament of Canada exclusive legislative authority over "banking;" and gives the Provincial Legislature exclusive authority with respect to "property and civil rights in the province." *Held*, that "banking" includes every transaction coming within the legitimate business of a banker, and that the provisions of the Bank Act dealing with the hypothecation of warehouse receipts, were not *ultra vires* the Dominion Parliament.—*Tennant v. Union Bank of Canada*, L.R. [1894] A.C. 31; 69 L.T. 774.
- (iv.) **P. C.**—*Cyprus—Legitimacy.*—The legitimacy of a Christian Ottoman subject in Cyprus is to be ascertained by the Christian, and not by the Mahommedan law.—*Parapano v. Happaz*, 70 L.T. 254.
- (v.) **P. C.**—*Queensland—Dividend Duty Act, 1890, s. 8—Assets in Queensland—Mortgage Securities.*—Advances made by a company outside the colony on the security of real and personal property within the colony, *held*, to be assets in Queensland within the meaning of the Act, though the debtors did not reside in the colony, and neither principal nor interest was payable in it.—*Walsh v. The Queen*, 70 L.T. 257.
See Bankruptcy, p. 71, iv.

Company :—

- (vi.) **Ch. D.**—*Alteration of Articles—Reserve Capital—Companies Acts, 1862, ss. 16, 50; 1879, s. 5.*—A company cannot contract itself out of the power to alter the articles. One of the articles of a company provided that £4 per share should be reserve capital not to be called up except in case of a winding-up, and that a special resolution to that effect should be passed. No valid special resolution to this effect was passed, and ultimately the article was repealed by a special resolution. *Held*, that this was valid.—*Malleson v. National Insurance and Guarantee Corporation*, L.R. [1894] 1 Ch. 200; 70 L.T. 157; 42 W.R. 249.
- (vii.) **Ch. D.**—*Director—Contract—Declaration of Interest—Penalty—Notice.*—The articles of a company provided that the office of any director should be vacated if he was interested in any contract with the company, without declaring his interest. The plaintiff was a director, and at a board meeting he informed the chairman, before the commencement of business, that he was "jointly interested" with M. in

a contract concerning which there was a question for discussion, but he did not specify the nature of his interest. The plaintiff took no part in the business, and was recorded in the minutes as "neutral." At a meeting of the board, of which no notice was given to the plaintiff, his seat as a director was declared vacant. *Held*, that the plaintiff ought to have declared the nature of his interest in the contract, and that he had not satisfied the requirements of the articles; but that he ought to have had an opportunity of justifying himself. Injunction granted to restrain the company from interfering with the plaintiff in the discharge of his duties as a director.—*Turnbull v. West Riding Athletic Club*, 70 L.T. 92.

- (i.) **Ch. D.—Director—Qualification Shares—Implied Contract to Take.**—The articles of a company provided that the first directors might act before acquiring their qualification shares, but that unless they acquired them within one month from their appointment, they should be deemed to have agreed to take the same, and that the same should be allotted to them. R. was named as one of the first directors. The company was incorporated in July, 1891. On the 21st July, 1891, R. wrote to the company's engineer a letter in which he referred to his having signed the articles and to a prospectus in which his name appeared as a director. On the 8th September, 1891, he wrote resigning his place on the board. The directors accepted his resignation, but allotted to him his qualification shares. R. never attended any board meeting, or otherwise acted as a director. *Held*, that the fact that R. had authorised the company by the letter of the 21st July to hold him out to the world as a director, and that he had allowed himself to be named as a first director, was evidence that he had agreed to take the shares, that the letter of resignation confirmed such evidence, and that his name ought to be on the list of contributories.—*In re Hecynia Copper Co.*; *e. p. Richardson*, 70 L.T. 286.
- (ii.) **Ch. D.—Director—Qualification—Estoppel.**—The articles of a company provided that the first directors should have one month from the first general allotment of shares to acquire their qualification; and that a director should vacate his office if he ceased to hold the qualification shares, or in the case of a first director, failed to acquire them within the month. C., a first director, had signed the memorandum for one share, but never applied for his qualification shares. His qualification shares were allotted to him and registered in his name at the first general allotment without his knowledge. When he became aware of the allotment he requested that his name might be removed from the register, and the day after the expiration of the month, sent in his resignation, and did not afterwards act as a director. *Held*, that he could not be fixed with constructive notice of the fact that his name was on the register, that he was not estopped from denying that he had applied for shares, and that he was entitled to be removed from the register.—*E. p. Cammell*; *in re Printing, &c., Co. of the Havas Agency*, L.R. [1894] 1 Ch. 528; 63 L.J. Ch. 214; 70 L.T. 74.
- (iii.) **C. A. — Directors—Trustees—Limitations.**—The directors of a company had acted *ultra vires*, but not fraudulently, in the investment of funds of the company. More than six years afterwards the liquidator of the company applied for a declaration that they had committed a breach of trust, and were liable for the misapplication of the funds. *Held*, that the directors as trustees were protected by the Trustee Act, 1888, sect. 8, the misapplication not being fraudulent. A director who is not a party to a misapplication of the company's funds cannot be made liable for not taking proceedings to upset the transaction after it is concluded.—*In re The Lands Allotment Co.*, 70 L.T. 286; 42 W.R. 404.

- (i.) **C. A.—Sale of Undertaking—Call—Death of Shareholder—Executors—Notice.**—A company had power to sell its undertaking. It sold its undertaking to another company, and, in accordance with the terms of sale, called up the uncalled capital and paid it to the purchasing company. *Held*, that the call was not *ultra vires*. The articles provided for notice of calls to be made by letter sent to the registered addresses of shareholders. *Held*, that a letter duly posted to a shareholder at his registered address was good, although the shareholder was dead, and the notice never reached the executors, the death of the shareholder not having been notified to the company.—*New Zealand Gold Extraction Co. v. Peacock*, L.R. [1894] 1 Q.B. 622; 63 L.J. Q.B. 227; 70 L.T. 110.
- (ii.) **Q. B. D.—Transfer—Estoppel.**—The plaintiff, the holder of shares in the defendant company, bought other shares and took a transfer *bona fide*, but did not obtain a certificate of registration. The transfer was forged by the secretary. The plaintiff received two dividend warrants in respect of the total number of shares. The company afterwards refused to recognise his title to the newly acquired shares. *Held*, that the payment of the dividends did not estop the company from denying the plaintiff's title, and that the company was entitled to the return of the dividend paid by mistake.—*Foster v. Tyne Pontoon and Dry Docks Co.*, 63 L.J. Q.B. 50.
- (iii.) **C. A.—Winding-up—Distribution of Surplus Assets—Companies' Act, 1862, s. 133.**—The articles of association of a company, which was in voluntary liquidation, provided that in case of a winding-up, if the surplus assets should be insufficient to repay the whole of the paid-up capital, such surplus should be applied, first, in repaying to the preference shareholders *pro rata* the amount paid up on the preference shares held by them at the commencement of the winding-up, so far as such surplus assets should extend, and that the balance of such surplus (if any) should be distributed amongst the ordinary shareholders. *Held*, that the "surplus assets" included capital not called up at the commencement of the winding-up; and that for the purpose of adjusting the rights of preference shareholders *inter se*, the liquidator ought to call up the balance uncalled up on such of the preference shares as had not been fully paid up.—*In re Sheppard's Corn Malting Co.*; *e. p. Lowenfeld*, 70 L.T. 8.
- (iv.) **Ch. D.—Winding-up—Foreign Action—Injunction—Companies Act, 1862, s. 163.**—In the winding-up of an English company whose assets were in Brazil, a part-performed contract for the sale of the Brazilian assets was agreed to be sold for £36,000. An English creditor laid an embargo on the Brazilian assets, by levying execution on a judgment of the Brazilian Court, and thereby prevented payment of the £36,000. He was ordered to remove the embargo on terms of a sum being placed to a separate account to meet any claim which he might establish.—*In re Central Sugar Factories of Brazil*; *Flack's Case*, L.R. [1894] 1 Ch. 369; 42 W.R. 345.
- (v.) **Ch. D.—Winding-up—Voluntary and under Supervision.**—Sect. 15 of the Companies (Winding-up) Act, 1890, applies to voluntary liquidations and to liquidations continued under supervision, as well as to compulsory liquidations.—*In re Stock and Share Auction and Banking Co.*; *in re Spiral Woodcutting Co.*; *in re Hull Land and Property Investment Co.*, 63 L.J. Ch. 245; 70 L.T. 285; 42 W.R. 800.
- (vi.) **C. A.—Winding-Up—Debenture-Holders' Action—Receiver—Official Receiver.**—Where there are pending a debenture-holders' action and also a winding-up by the Court, it is proper, in general, that the official receiver should be appointed receiver for the debenture-

holders. But when some of the assets contained in the debenture-holders' security were of a special nature, *held*, that the receiver approved of by them should be appointed to get in such assets, the official receiver being appointed receiver of all the other assets.—*British Linen Co. v. South American and Mexican Co.*, L.R. [1894] 1 Ch. 108.

- (i.) **Ch. D.—Winding-up Proceedings—Injunction to Restrain.**—The defendants, the solicitors of the plaintiff company, gave the company formal notice demanding payment of certain promotion expenses, and stating "This demand is in compliance with the provisions of the Companies Acts." The company believed that the defendants were about to commence winding-up proceedings, and sued for an injunction. *Held*, that there was jurisdiction to restrain the presentation of a winding-up petition; and that in this case, as it appeared that the debt, if any existed, was not presently payable, an injunction ought to be granted.—*New Travellers' Chambers v. Cheese & Green*, 70 L.T. 271.

Compulsory Purchase:—

- (ii.) **C. A.—Public Body—Special Act—Payment in—Costs—Jurisdiction—Supreme Court of Judicature Act, 1890, s. 5.**—Decision of Ch. D. (*see* Vol. 19, p. 39, i.) affirmed.—*In re Fisher*, 63 L.J. Ch. 235; 70 L.T. 62; 42 W.R. 241.

Contempt of Court:—

- (iii.) **Ch. D.—Trade-Mark Case—Circular.**—Pending an action for infringement of a trade-mark the plaintiff may warn the trade by circular; but to introduce discussion of the merits of the action is a contempt of Court.—*J. & P. Coats v. Chadwick*, L.R. [1894] 1 Ch. 347; 70 L.T. 228; 42 W.R. 328.

Copyhold:—

- (iv.) **Q. B. D.—Seizure Quousque—Lapse of Time—Implied Admittance—Limitations.**—Where, after the death of the last tenant, the lord has for upwards of twenty years collected quit rents from the devisees or customary heirs, and has neglected to make the customary death proclamations, or to give notice to the devisees or customary heir to take admittance and pay the fine, such an admittance of the devisees or customary heir will be implied as will bar the lord's right to seize *quousque*. Further, such right is barred by the statutes of limitations.—*Ecclesiastical Commissioners v. Parr*, 63 L.J. Q.B. 115; 70 L.T. 170.

Costs:—

- (v.) **Ch. D.—Interlocutory Order—Interest—Judgments Act, 1838, ss. 17, 18, 20—R. S. C., 1883, O. xlii., rr. 14, 16.**—When an interlocutory order directs payment of costs by A. to B., interest on the costs thereby awarded is payable as from the date of the order.—*Taylor v. Roe*, L.R. [1894] 1 Ch. 413; 70 L.T. 232.

County Court:—

- (vi.) **Q. B. D.—Appeal—Death of Parties—Jurisdiction to add Personal Representatives.**—Where, pending an appeal from a county court, one of the parties dies, the High Court has jurisdiction to give leave to add the personal representatives of such party, and no application need be made to the county court.—*Blakeway v. Patteshall*, L.R. [1894] 1 Q.B. 247.

- (i.) **C. A.—Practice—Jurisdiction of Registrar—Non-appearance of Defendant—Counter-claim—County Courts Act, 1888, s. 90—County Court Rules, 1889, O. xxii., r. 6.**—In an action on a solicitor's bill, commenced by default summons in a county court, the defendant gave notice of defence and of a counter-claim for negligence. The case was called on during vacation, when the judge was not sitting. The defendant did not appear. The registrar gave judgment for the plaintiff, without any proof of the debt other than the affidavit filed with the summons, and struck out the counter-claim. On application for prohibition. *Held*, that even if the registrar was wrong in giving judgment without further proof, and had no jurisdiction to strike out the counter-claim, there was no ground for prohibition.—*Hooper v. Hill*, L.R. [1894] 1 Q.B. 659; 70 L.T. 224; 42 W.R. 394.
- (ii.) **C. A.—Practice—Default Summons—Out of Jurisdiction—Affidavit—County Courts Act, 1888, ss. 74, 86—County Court Rules, 1889, O. v., rr. 9a, 10, Appendix, Form 14a.**—Where the claim in a county court action exceeds £5, and the plaintiff asks leave for the issue of a default summons out of the jurisdiction, it is not required of him to swear that the defendant is not of any of the occupations or descriptions specified in the order above-mentioned.—*Gordon v. Evans*, L.R. [1894] 1 Q.B. 248; 70 L.T. 70.
- (iii.) **Q. B. D.—Jurisdiction—Winding up of Company—Writ of *fi. fa.*—Officers of Court—Companies Act, 1890, s. 1—Rules under Act, r. 20.**—A company was being wound up under the Act by a county court, and the judge ordered a writ of *fi. fa.* to issue, addressed to the sheriff, against a debtor to the company. *Held*, that the writ was bad, and that where a county court has the powers of the High Court, it must use its own officers.—*In re Bassett's Plaster Co.*, 42 W.R. 410.
- (iv.) **C. A.—Prohibition—Want of Jurisdiction Apparent—Acquiescence.**—A lease of a farm provided for compensation to the tenant for certain matters outside the Agricultural Holdings Act, 1883, and also that sects. 7 to 28 of the Act should apply to claims under the lease as well as under the Act. An award was made by an umpire, on the face of which it appeared that compensation was made for matters outside the Act, and an appeal therefrom was heard by the county court judge. The High Court made an order, which, as the tenant alleged, was made with consent, that the case be remitted to the county court. The county court judge held the award to be good, and made an order under sect. 24 of the Act enforcing the award. *Held*, that as the want of jurisdiction was apparent on the face of the proceedings, the landlord, notwithstanding any acquiescence on his part to the exercise of jurisdiction, was entitled to a writ of prohibition restraining the county court from enforcing that part of the award which allowed compensation for matters outside the Act.—*Farquharson v. Morgan*, L.R. [1894] 1 Q.B. 552; 70 L.T. 152; 42 W.R. 306.

Covenant:—

- (v.) **C. A.—Fixtures—Operative Machinery.**—The defendant was bound by covenant that no "operative machinery" should be fixed or fastened upon certain land, and that "no hut, tent, shed, caravan, house on wheels, or other chattel" should be erected or placed thereon. *Held*, that a switchback railway was "operative machinery" and also a "chattel" within the meaning of the covenant.—*Chamberlayne v. Collins*, 70 L.T. 217.

Criminal Law:—

- (vi.) **C. C. R.—Embezzlement—Clerk or Servant—Director of Company in Service of Company—24 & 25 Vict., c. 96, s. 68.**—Where a member and

director of a company is employed by the company at a salary, his position as director does not prevent his being also a servant, and he may be convicted of embezzling the moneys of the company.—*Reg. v. Stuart*, L.R. [1894] 1 Q.B. 310; 63 L.J. M.C. 68; 70 L.T. 44; 42 W.R. 308.

- (i.) **P. C.**—*Evidence—Admissibility—Criminal Law Amendment Act of New South Wales*, s. 423.—The appellants were indicted for the murder of an infant whom they had taken in to nurse upon payment of a small sum, alleging that they intended to adopt it. *Held*, that evidence that several other infants had been received by the appellants on like representations, and upon payment of sums inadequate to pay for their support for more than a short time, and that bodies of infants had been found buried in the gardens of houses occupied by the appellants, was admissible. When material evidence has been improperly admitted the statute above mentioned does not empower the Court to affirm a conviction upon the ground that there was sufficient evidence to support it without such improperly admitted evidence, unless such evidence was directed to some merely formal matter.—*Makin v. Attorney-General for New South Wales*, L.R. [1894] A.C. 57; 69 L.T. 778.
- (ii.) **Q. B. D.**—*Extradition—Theft—Stolen Property Produced by Purchaser—Detention—Extradition Act*, 1870, s. 9.—Upon the hearing by a magistrate of an application for the extradition of a person charged with a theft committed in France, the purchaser of the property alleged to be stolen produced it under a *subpoena duces tecum*. The magistrate having committed the accused to await an extradition warrant, orally directed a constable to take charge of the property, that it might be produced at the trial in France. The purchaser applied for an order under 11 & 12 Vict., c. 44, s. 5, that the property might be delivered to him. *Held*, that the magistrate was *functus officio* as soon as he had made the order for committal, and that any subsequent direction as to the property was not an act relating to the duties of his office; and that the Court had no jurisdiction to make the order. *Held*, also, that, assuming there was jurisdiction, the purchaser's possessory title was diverted by the property passing out of his possession under the *subpoena duces tecum*, and that he was not entitled to the relief asked.—*Reg. v. Lushington*, L.R. [1894] 1 Q.B. 420; 42 W.R. 411.
- (iii.) **C. C. R.**—*Indictment—Property—Illegal Association—Embezzlement of Moneys*.—The members of an unregistered club, having for its object the acquisition of gain by such members, which is illegal owing to non-compliance with sect. 4 of the Companies Act, 1862, are the beneficial owners of the property of the club. It is therefore right in an indictment against the treasurer of the club for stealing or embezzling moneys paid to him on behalf of the club, to lay the property in the moneys in the individual members of the club as beneficial owners.—*Reg. v. Tankard*, L.R. [1894] 1 Q.B. 548; 63 L.J. M.C. 61; 70 L.T. 42; 42 W.R. 350.
- (iv.) **Q. B. D.**—*Lottery—Aiding and Abetting*.—The appellant was convicted of aiding, abetting, counselling, and procuring the keeping of a lottery. The lottery was carried on by the sale of sweetmeats, a certain number of which contained coins. The appellant supplied such sweetmeats wholesale, knowing the purpose for which they were to be used, and was proved to have urged on a retail dealer the purchase of his sweetmeats on the ground that they contained more money prizes than those sold elsewhere. *Held*, that the conviction was right, and that the evidence that the appellant incited the retail dealer in such illegal dealing was evidence to support it.—*Barratt v. Burden*, 63 L.J. M.C. 33.

- (i.) **C. C. R.**—*Offence against Criminal Law Amendment Act, 1885—Aiding and Abetting—Soliciting—Girl under Sixteen.*—A girl under sixteen cannot be convicted of aiding and abetting the commission upon herself of an offence against the Criminal Law Amendment Act, 1885, nor of soliciting and inciting a male person to commit such an offence upon her.—*Reg. v. Tyrell*, 63 L.J. M.C. 58; 70 L.T. 41; 42 W.R. 254.

Damages :—

- (ii.) **C. A.**—*Assessment to Time of Assessment—Continuing Cause of Action*—R. S. C., 1883, O. xxxvi., r. 58.—“A continuing cause of action” within the meaning of the rule, is a cause of action arising from the repetition of acts or omissions similar to those in respect of which the action was brought. The plaintiffs obtained judgment for an injunction and damages against the defendants for allowing sewage to pollute the plaintiffs’ stream. The pollution continued, and three years after judgment the chief clerk assessed the damages, carrying the assessment down to the date of his certificate. *Held*, that there was “a continuing cause of action,” and that the damages were rightly assessed down to the time of the assessment.—*Hole v. Chard Union*, L.R. [1894] 1 Ch. 293; 70 L.T. 52.

Deed :—

- (iii.) **Ch. D.**—*Construction—Words of Limitation.*—An equitable estate in fee cannot be formally limited by deed without words of inheritance or their statutory equivalent.—*Lovatt v. Whighton*, 42 W.R. 327.

Distress :—

- (iv.) **Q. B. D.**—*Damage Feasant.*—Trespassing animals may be distrained damage feasant, not only when damage is done to the freehold, but also when it is done to other animals.—*Boden v. Roscoe*, L.R. [1894] 1 Q.B. 608.

Easement :—

- (v.) **C. A.**—*Light—Injunction or Damages—Future Injury—Lord Cairns’ Act, s. 2—Special Circumstances.*—See Vol. 19, p. 41, iii. *Held*, by C. A. that as the plaintiff had proved his legal right to the light, and that the proposed building would infringe that right, and there being no special circumstance disentitling him to relief, he was entitled to an injunction as to the threatened building, and to damages as to the completed building. *Quere*, whether the Court can give damages instead of an injunction in respect of threatened injury.—*Martin v. Price*, L.R. [1894] 1 Ch. 276; 63 L.J. Ch. 209; 70 L.T. 202; 42 W.R. 262.

Ecclesiastical Law :—

- (vi.) **Consistory Court of Chester.**—The Ordinary ought not in his discretion to sanction the introduction into a church of an inscription asking for prayers for the soul of a deceased person.—*Egerton v. All of Odd Rode*, L.R. [1894] P. 15.

Estoppel :—

- (vii.) **Q. B. D.**—*Gavelkind—Lease by Coparcener—Tenant estopped from denying Title of Heir of Grantor—Deduction of Title.*—H., J. and M., three brothers, were entitled to land as coparceners in gavelkind. H. made a lease of the whole to X., who entered and paid rent for the whole to H., up to the latter’s death. J. being also dead, M. claimed the land as heir-at-law of his brothers. X., except as to H.’s third,

set up the Statute of Limitations. *Held*, that X. would have been estopped from denying the title of H. to the whole of the land, and was equally estopped from denying the title of M., the heir and privy in blood of H. *Held*, also, that the mode of finding a privy in blood is not affected by 3 and 4 Will. IV., c. 106, which makes descent traceable from the last purchaser.—*Weeks v. Birch*, 69 L.T. 759.

- (i.) **Ch. D.—*Matter of Record*.**—The A. company, owners of land, borrowed money on debentures secured by a trust deed, which gave meetings of debenture-holders powers of compromise of claims against the company. The E. company bought the land, and covenanted to indemnify the A. company. Meetings of debenture-holders agreed by special resolutions to compromise their claims. Certain dissentients obtained a decision that the resolutions were invalid, and afterwards sued the E. company. *Held*, that the E. company were not estopped by the previous judgment from showing that the resolutions were valid, for they were not parties to the previous action, and their covenant to indemnify the A. company did not put them in the position of defendants thereto; also, that they were not "privies in estate" of the A. company, as the previous judgment could not bind the land, and a purchaser of land cannot be estopped, as privy in estate, by a judgment against the vendor in an action brought after the purchase; and that, though the E. company would have been estopped from disputing the judgment in an action by the A. company suing them on their covenant for indemnity, it was not so in this action brought on totally different grounds to which the A. company were not parties; and therefore that the E. company could shew that the resolutions were valid to bind the dissenting minority.—*Mercantile Investment and General Trust Co. v. River Plate Trust Loan and Agency Co.*, L.R. [1894] 1 Ch. 578; 70 L.T. 131; 42 W.R. 365.

See Practice, p. 96, iii.

Gaming:—

- (ii.) **Q. B. D.—*Agent Employed to Make Bets—Action for Money had and received***—*Gaming Act*, 1892, s. 1.—A. employed B. as his agent to make bets, and B. received from the persons with whom he had betted the amounts of the bets won. *Held*, that A. could maintain an action to recover the amounts so received by B.—*De Mattos v. Benjamin*, 63 L.J. Q.B. 248; 42 W.R. 284.
- (iii.) **Q. B. D.—*Act for the Suppression of Betting Houses***, 1853, ss. 1, 3.—To open or keep a house or other place for the purpose of betting with persons resorting thereto is an offence against the Act above-mentioned.—*Bond v. Plumb*, L.R. [1894] 1 Q.B. 169; 42 W.R. 222.

Goodwill:—

- (iv.) **Ch. D.—*Trade Name—Business—Assignment*.**—John Forrest, a watchmaker in London, used to mark his goods "John Forrest, London." After his death in 1871, his administratrix sold his business and goodwill to C., a watchmaker in London. In 1874 C. granted to S., a watchmaker in Liverpool, the sole right for seven years to put the name "John Forrest, London" on his goods. After the expiration of the licence C. put the said name on very few, if any, of his goods. In 1890 he assigned his estate for the benefit of creditors, and the trustee sold the business to X., who carried it on; and at the same time the trustee purported to assign to T., a watchmaker in Coventry, "the name, title, and goodwill of John Forrest, London." T. attempted to restrain another watchmaker from using the name on his goods. *Held*, that the action would not lie, for, assuming that C. acquired the

right to use the name in 1871, he had lost it under the licence to S., and had never regained it. *Held*, also, that even if anything had been assigned to T. by the trustee, it was a mere right to use the name unconnected with any business, and being an assignment in gross, was invalid.—*Thorneloe v. Hill*, L.R. [1894] 1 Ch. 569; 70 L.T. 124; 42 W.R. 397.

Husband and Wife:—

- (i.) **C. A.—Contract—Promise to Leave Property by Will—Breach of.**—A marriage took place on the faith of a written promise by the husband to the wife that he would leave her certain real property for life. After the marriage he conveyed the property to a third person. *Held*, that there was a contract binding on the husband to leave the property to the wife, and that she was entitled to treat the conveyance as a breach of the contract, and to sue for damages.—*Synge v. Synge*, L.R. [1894] 1 Q.B. 466; 63 L.J. Q.B. 202; 70 L.T. 221; 42 W.R. 309.
- (ii.) **C. A.—Malins' Act—Instrument "made after 31st December, 1857"—Will Republished.**—By will dated in 1856 residuary estate was given in trust for Mrs. W. for life, and after her death for her children. There was a direction that the "several pecuniary legacies" bequeathed to married women should be for their separate use. After the 31st of December, 1857, the testatrix executed a codicil adding to the pecuniary legacies. She died in 1868. In 1868 one of the daughters of Mrs. W., with the concurrence of her husband, by deed acknowledged, assigned her share of the residue. *Held*, that she did not become "entitled under an instrument made after the 31st of December, 1857," as she derived title under the will, and the will and codicil could not for that purpose be treated as one instrument; *held*, also, that her share of the residue did not come within the words "pecuniary legacies," and was not given to her separate use. *Held*, therefore, that it did not pass by the assignment.—*Layborn v. Grover Wright*, L.R. [1894] 1 Ch. 303; 70 L.T. 54; 42 W.R. 279.
- (iii.) **C. A.—Divorce—Alimony—Release—Consideration.**—The payment of a sum less than the arrears of alimony is not a sufficient consideration to support a promise to release arrears and future payments.—*Underwood v. Underwood*, 42 W.R. 372.
- (iv.) **P. D.—Divorce—Discretionary Bar—Adultery of Wife—Cruelty of Husband—Maintenance.**—In a suit by the husband the jury found the wife guilty of adultery and the husband of cruelty, but they were not asked to give, and did not give, any verdict whether the cruelty of the husband had conduced to the adultery of the wife. The Court, being satisfied that the adultery had not been brought about by the cruelty of the petitioner, pronounced a decree *nisi*, but directed that it should not be made absolute until the petitioner had secured to the respondent maintenance *dum sola et casta vixerit*.—*Edwards v. Edwards*, L.R. [1894] P. 33; 63 L.J. P. 62; 70 L.T. 39.
- (v.) **P. D.—Divorce—Maintenance—Income of Respondent.**—On a petition for maintenance by a wife, who had obtained a decree for divorce, it appeared that the husband's income was derived from a business in which he was partner. *Held*, that he must secure maintenance for his wife upon the basis of one-third of the whole of his share of the average profits to which he had been entitled during the three preceding years, although by the partnership articles he was only entitled to draw a limited amount of the profits, unless with the consent of his partner.—*Hanbury v. Hanbury*, L.R. [1894] P. 102.

- (i.) **C. A.**—*Divorce—Pleadings—Wife's Answer—Striking out.*—The wife, respondent in divorce proceedings, alleged in her answer as conduct of her husband conducing to her alleged adultery, certain flirtations and familiarities with other women. *Held*, that, though the allegations did not constitute a strong charge, it was not impossible that the judge might consider that if the alleged facts were proved, the husband had by his neglect conduced to the wife's adultery, and therefore that the allegations ought not be struck out.—*Cox v. Cox*, 70 L.T. 200.
- (ii.) **P. D.**—*Divorce—Practice—Intervention of Queen's Proctor—Leave to Add Charge of Adultery—Intervention of Person with whom Adultery Charged.*—Where the Queen's Proctor intervened after decree nisi, and in the course of the trial, leave was given to add to his previous pleas a charge of adultery committed with L., a motion by L. for leave to intervene was refused.—*Carew v. Carew*, L.R. [1894] P. 31.
- (iii.) **C. A. & P. D.**—*Divorce—Wife's Costs Pendente Lite.*—On an application by a wife, *pendente lite*, that the husband may be ordered to pay her costs already incurred, and give security for her future costs, the judge has a discretion, and may take into account the relative income of the husband and wife, and is not bound to refuse the application because the wife has separate property the amount of which is much more than is sufficient for the payment of her costs.—*Allen v. Allen*, L.R. [1894] P. 134; 42 W.R. 230.

Infant:—

- (iv.) **Ch. D.**—*Maintenance—Interest on Legacy—Conveyancing Act, 1881, s. 43.*—The income of a sum of stock specifically bequeathed in trust for an infant on the contingency of his attaining twenty-one, will, on his attaining that age, belong to him; and therefore it may be applied for his maintenance.—*Clements v. Pearsall*, 42 W.R. 374.

International Law:—

- (v.) **C. A.**—*Foreign Sovereign—Immunity—Submission to Jurisdiction—Proof of Independent Sovereignty.*—The Court will not entertain an action against an independent foreign sovereign unless he voluntarily submits himself in that particular action to the jurisdiction of the Court. Such a submission cannot be made until the Court is asked to exercise its jurisdiction, and therefore the Court will not consider his previous conduct as evidence of such submission having been made. A certificate from a responsible Minister of the Queen as to the relations between Her Majesty and a foreign sovereign is conclusive in Her Majesty's Courts.—*Mighell v. Sultan of Johore*, L.R. [1894] 1 Q.B. 149; 70 L.T. 64.

Interpleader:—

- (vi.) **Q. B. D.**—*Sheriff—Costs—R.S.C., 1888, O. lvii., rr. 15, 16, 17.*—After an interpleader order had been made as to goods in possession of the sheriff, the landlord claimed them for rent. The execution creditor declined to pay the rent, the goods were distrained, the issue was not tried. The sheriff applied for costs, to be paid by the execution creditor, and the execution creditor applied for costs against the claimant. *Held*, that the execution creditor should first pay the sheriff's costs, and that the claimant should pay him half the sheriff's costs from the date of the claim.—*Lawson v. Carter*, 63 L.J. Q.B. 159.
- (vii.) **C. A.**—*Deposit—Forfeiture—Second Seizure—Second Deposit—County Courts Act, 1888, s. 156.*—Decision of Q. B. D. (see Vol. 19, p. 46, ii.) affirmed.—*Haadow v. Morton*, L.R. [1894] 1 Q.B. 565.

Joint Tenancy:—

- (i.) **Ch. D.**—*Severance—Covenant to Settle.*—A covenant by an intended husband and wife to settle the wife's after-acquired property; *held*, to effect a severance of the wife's joint tenancy in personal estate created by a subsequent instrument.—*Hewett v. Hallett*, L.R. [1894] 1 Ch. 862; 63 L.J. Ch. 182; 42 W.R. 238.

Justices:—

- (ii.) **Q. B. D.**—*Procedure—Appeal—Recognisance—Time.*—Application to justices to state a case was made on the 21st September. The case was not stated till the 20th December, and the appellant did not enter into his recognisance till the 21st December. *Held*, that Rule 18 of the Rules of 1886 under the Summary Jurisdiction Act, 1879, had not been complied with.—*Walker v. Delacombe*, 63 L.J. M.C. 77.

Landlord and Tenant:—

- (iii.) **Q. B. D.**—*Covenant to Repair—Breach—Underlessee—Liability for Costs of Surveyor, &c.—Conveyancing Acts, 1881, s. 14, sub-s. 1, 2; 1892, s. 2, sub-s. 1, s. 4.*—An underlessee of the whole of the premises contained in the head lease is included in the term lessee in the sections above-mentioned, and the lessor is entitled to recover from him the costs therein specified. A lessee who, in obedience to a notice from his lessor, remedies the breach of covenant specified and makes the compensation demanded, and thereby renders unnecessary an application to the Court for relief from forfeiture, "is relieved" under the provisions of the Act, within the meaning of sect. 2, sub-sect. 1, of the second Act above-mentioned.—*Nind v. Nineteenth Century Building Society*, L.R. [1894] 1 Q.B. 472; 63 L.J. Q.B. 106; 70 L.T. 816; 42 W.R. 849.
- (iv.) **Q. B. D.**—*Negligence—Weekly Tenancy—Liability of Reversioner—Notice.*—In an action for damages against the landlord of premises let on a weekly tenancy by a person who has been injured by an accident which took place on the premises, it is a question for the jury whether the accident was caused by a structural defect existing at the time of the original letting, or whether it was caused by the neglect of the tenant.—*Bowen v. Anderson*, L.R. [1894] 1 Q.B. 164; 42 W.R. 286.
- (v.) **Ch. D.**—*Notice—Telephone.*—The plaintiffs made a three years' agreement with the defendants for the hire of telephonic apparatus and wires at a rent payable quarterly. The agreement empowered the defendants to determine the agreement forthwith on non-payment of rent or breach of conditions. The tenancy was continued by mutual consent after the three years. Immediately prior to the expiration of a quarter the defendants gave notice to determine forthwith, and subsequently demanded and received rent for the whole quarter. *Held*, that they must be restrained from acting on their notice to determine.—*Keith, Prowse, and Co. v. National Telephone Co.*, 70 L.T. 276; 42 W.R. 880.

Lands Clauses Act:—

- (vi.) **Q. B. D.**—*Arbitration—Death of Umpire before Award—Costs—Sects. 23, 34.*—Under an application for compensation by a landowner against a railway company a statutory arbitration under two arbitrators and an umpire had been commenced. Subsequently, owing to the death of the umpire, the parties agreed to submit the arbitration to a sole arbitrator. Compensation exceeding the amount offered was awarded. *Held*, that the landowner was entitled to costs

from the initiation of the arbitration; that the substitution by agreement of a sole arbitrator in lieu of the umpire, did not put an end to the original submission; and that the provisions as to a jury in default of an award did not apply if the parties had agreed to an alternative arrangement.—*Reg. v. Manley-Smith*, 63 L.J. Q.B. 171.

Libel :—

- (i.) **C. A.—Company—Statements Affecting Business—Special Damage—Public Interest.**—A company has the same right of action in respect of a libel reflecting upon the conduct of its business as an individual has, and can maintain an action without proving special damage. The plaintiffs were a colliery company, and owned a number of cottages in a colliery village, which were occupied by their workmen. The defendants published an article, which was one of a series dealing with the condition of colliery villages, and which described the village as being in a most insanitary condition, and unfit for habitation. The village contained about 2,000 inhabitants, and was under a rural sanitary authority. *Held*, that the matter was one of public interest, upon which fair comment might be made.—*South Hetton Coal Co. v. North-Eastern News Association*, L.R. [1894] 1 Q.B. 133; 69 L.T. 844; 42 W.R. 322.
- (ii.) **C. A.—Privileged Communication—Solicitor Acting for Client.**—A solicitor acting for a client in the recovery of a debt due from the plaintiff, wrote to an auctioneer, who was about to sell the plaintiff's goods, stating that the plaintiff had committed an act of bankruptcy on which an order might be made against him in bankruptcy, and gave the auctioneer notice not to part with the proceeds of the sale. The plaintiff sued the solicitor for libel. *Held*, that as the occasion would have been privileged in the case of the client, it was equally so in the case of the solicitor, who was acting for the client in the course of his ordinary duty.—*Baker v. Carrick*, 42 W.R. 338.
- (iii.) **C. A.—Privilege—Letter by Solicitors on behalf of Client—Copy by Clerk.**—A firm of solicitors, being instructed by a client to obtain payment of a debt, wrote to the plaintiff erroneously believing him to be the person who owed the debt. The letter, which the plaintiff complained of as libellous, was written from dictation by a clerk, and a copy of it was made by another clerk. *Held*, that the communication of the letter to the clerks was privileged, it being written in the ordinary course of business, and the employment of clerks being necessary.—*Bozzius v. Goblet Frères*, 42 W.R. 892.

Licensing :—

- (iv.) **Q. B. D.—Beerhouse—Renewal—New Occupier—Unlicensed Person—Wine and Beerhouse Act, 1869, s. 8—Licensing Act, 1872, s. 42.**—When the holder of the licence of a beerhouse which has been licensed before and ever since May, 1869, goes out of occupation, and the house is closed, the new occupier is entitled to apply for a renewal to him of the licence, although he was not himself licensed before.—*Symons v. Wedmore*, L.R. [1894] 1 Q.B. 401; 63 L.J. M.C. 44; 69 L.T. 801; 42 W.R. 301.
- (v.) **Q. B. D.—Grant of Publican's Licence—Former Conviction of Licensees—Jurisdiction—Beer House Act, 1840, s. 7—Wine (Refreshment) Act, 1860, s. 7—Licensing Act, 1872, s. 50—Inland Revenue Act, 1880, s. 43, sub-s. 2.**—An applicant for a full publican's licence had been convicted of selling spirits without a licence. The licensing justices, however, granted him authority to hold "any excise licences that may be held by a publican." He took out an excise spirit licence, under which he

might also sell beer or wine by retail. *Held*, that the justices had not exceeded their discretionary jurisdiction, as there was nothing in the Acts to disqualify the applicant from holding a spirit licence; but the Court expressed no opinion as to whether or not the licensee would expose himself to penalties by selling wine or beer.—*Reg. v. Roper*, 63 L.J. M.C. 68.

- (i.) **H. L.**—*Quarter Sessions—Practice—Court Equally Divided—Alehouse Act*, 1828, s. 9.—Where, on an appeal from licensing justices, the Court of Quarter Sessions is equally divided, the decision appealed against must be affirmed.—*E. p. Evans*, L.R. [1894] A.C. 16; 70 L.T. 45.
- (ii.) **H. L.**—*Quarter Sessions—Practice—Beerhouse—Grounds of Refusal—32 & 33 Vict., c. 27, s. 8.*—Where licensing justices refused an application for the renewal of a beerhouse licence, without specifying, as they were required to do, upon which of the grounds mentioned in the above-mentioned section they refused it, and the applicant appealed to Quarter Sessions; *held*, that he was not entitled to a renewal as a matter of course, but that the Court of Quarter Sessions could go into the merits of the case on the appeal, without further adjournment.—*E. p. Gorman*, L.R. [1894] A.C. 23; 70 L.T. 46.
- (iii.) **Q. B. D.**—*Offence—Permitting Drunkenness—Knowledge—Licensing Act*, 1872, s. 13.—A licensed person cannot be convicted of permitting drunkenness to take place on his premises, where the evidence shews that a person was in fact on the premises drunk, but the licensed person did not know that such person was drunk.—*Somerset v. Wade*, L.R. [1894] 1 Q.B. 574; 42 W.R. 399.

Limitations:—

- (iv.) **Q. B. D.**—*Time at which Statute Begins to Run—Ambassador—Immunity of Absence Beyond Seas—Return.*—While the ambassador of a foreign State is in this country and accredited to the Sovereign, the Statute does not begin to run against his creditors. The immunity of an ambassador from process of the Court extends for such a reasonable period after he has presented his letters of recall as is necessary to enable him to wind up his official business and return to his own country, although his successor may have been appointed. The Statute does not begin to run against his creditors during such period. The Rules of Court which permit service abroad do not affect the right of a plaintiff under 4 & 5 Anne, c. 16, in cases to which that Statute applies, to bring his action against a defendant after his return from beyond the seas.—*Musurus Bey v. Gadban*, L.R. [1894] 1 Q.B. 533.
- (v.) **C. A.**—*Receipt by Agent—Fraud of Agent—Claim Against Principal—Trustee Act*, 1888, s. 8.—Decision of Ch. D. (*see* Vol. 19, p. 14, v.) affirmed.—*Thorne v. Heard*, 42 W.R. 274.

See Company, p. 78, iii. Copyhold, p. 80, iv. Trustee, p. 107, iv.

Local Government:—

- (vi.) **Q. B. D.**—*Justices' Clerk—Salary—Local Government Act*, 1888, s. 84.—A county council, which claims the fines levied by justices of a non-quarter sessions borough, having a separate commission of the peace, is liable to pay the salary of the clerk to the borough justices.—*County Council of Cornwall v. Town Council of Truro*, 63 L.J. M.C. 60.
- (vii.) **Q. B. D.**—*New Street—Width—Laying Out—Bye-Law—Construction.*—A bye-law made under sect. 157 of the Public Health Act, 1875, provided that every person who should lay out a new street exceeding 100 feet in length, should lay out the same as a carriage way, with footways, and of a width of not less than thirty-six feet. G. was

lessee of a piece of ground, together with a right of way over the adjoining road, which was fifteen feet wide, for a distance of more than 100 feet. He began to build two houses on the ground of which he was lessee, but did not widen the road to thirty-six feet. *Held*, that beginning to build the houses did not amount to laying out a new street, and that G. had not infringed the bye-law.—*Gozett v. Maldon Sanitary Authority*, L.R. [1894] 1 Q.B. 327.

- (i.) **Q. B. D.**—*Rates—Lighting Rate—Coal Mines*—"Land"—*Poor Relief Act*, 1601.—Coal mines are not "land," but are "property (other than land) rateable to the relief of the poor" within the meaning of sect. 33 of the Lighting and Watching Act, 1833, and are therefore liable under that section to be rated at the higher rate.—*Thursby v. Churchwardens of Briercliffe-with-Extwistle*, L.R. [1894] 1 Q.B. 567.
- (ii.) **Q. B. D.**—*Sewer—Public Health Act*, 1875, s. 4.—A drain passing through private land, but receiving the drainage of more than one house, is a "sewer" within the Act.—*Travis v. Utley*, L.R. [1894] 1 Q.B. 233; 63 L.J. M.C. 48; 70 L.T. 242.
- (iii.) **Ch. D.**—*Sewer in Private Street—Surface Water Drain—Acceptance by Local Authority—New Sewer—Liability—Public Health Act*, 1875, ss. 13, 15, 21, 23, 150, 257.—In 1885 plans for seven proposed houses in part of a private street were submitted to and approved of by a local board. The plans shewed certain surface and slop-water drains leading into a pipe. The houses were built and the drains made, the pipe being connected with a sewer in an adjoining street. There was no express approval or disapproval of the drain by the local board, and it became vested in them on completion. Other houses were subsequently built along the private street, and in 1890 the local board required the frontagers to sewer the street. They did not do so, and the board did the work. *Held*, that the sanction given to the plans did not amount to an approval of the drain as a sewer for part of the street, and that the frontagers were liable for the expenses of making the new sewer.—*Handsworth Local Board v. Taylor*, 69 L.T. 798.
- (iv.) **Q. B. D.**—*Use of Fire Engines—Expenses of—Owner—Town Police Clauses Act*, 1847, s. 33.—The expenses incurred by commissioners in sending engines outside their limits for extinguishing fires are to be borne by the "owners" of land or buildings as defined by the Public Health Act, 1875, and the definition does not include an occupier as tenant from year to year.—*Salé v. Phillips*, L.R. [1894] 1 Q.B. 349 63 L.J. M.C. 79.

Lunatic :—

- (v.) **Ch. D.**—*Partition—Person of Unsound Mind—Foreign Asylum—Committee—Order for Sale—Declaration that Lunatic is a Trustee—Partition Act*, 1868, s. 7—*Trustee Act*, 1850, ss. 9, 20, 30.—An order for sale had been obtained in a partition action, and the certificate found that a person of unsound mind, not so found, was entitled to a share as tenant in tail. He was confined in an asylum in America, under an order of the American Court, and a committee of his property had been appointed by that Court, who declined to convey the lunatic's property in this country, but offered to abide by any order of the English Court. The lunatic was a defendant in the partition action by his guardian *ad litem*. *Held*, that the lunatic might be declared a trustee of his share, and the chief clerk was appointed to convey the lunatic's share to a purchaser in fee; but the proceeds of sale of the share were to be paid into Court and to remain subject to the same uses to which the lunatic's share was subject before the sale.—*Caswell v. Sheen*, 69 L.T. 854.

Married Woman :—

- (i.) **Ch. D.—Will—Appointment—General Power—Separate Estate—Married Women's Property Act, 1882, s. 1, sub-ss. 3, 4, s. 4.**—Property appointed by a married woman by will under a general testamentary power, becomes at her death liable for her "debts and other liabilities," even though she had no separate estate when she contracted them.—*Wilson v. Ann*, L.R. [1894] 1 Ch. 549; 70 L.T. 273.

See *Bankruptcy*, p. 73, v.

Master and Servant :—

- (ii.) **Q. B. D.—Accident caused by Street Music—Salvation Army.**—In an action against the defendant for injuries sustained owing to a horse being frightened by a Salvation Army band, *held*, that in the absence of evidence to shew what was the relationship between the bandsmen and the defendant, it could not be inferred that they were his servants or acting under his authority.—*London General Omnibus Co. v. Booth*, 63 L.J. Q.B. 244.
- (iii.) **P. C.—Common Employment.**—The appellants contracted with a stevedore to unload their ship, and the contract provided that the owners should provide for each hatch one winch-driver and one hatchman. The respondent, who was employed by the stevedore, was injured by the negligence of one of the hatchmen. *Held*, that the respondent and the hatchman were not in a common employment, and that the appellants were liable for the negligence of the hatchman.—*Union Steamship Co. v. Claridge*, 70 L.T. 177.
- (iv.) **P. C.—Liability—Scope of Employment.—Held**, that the defendants were liable for the act of a contractor who had lit a fire on their land, which had spread to the plaintiff's land, although such contractor in doing so had contravened special stipulations contained in such contract relative to the time at which the fire should be lit. To escape liability it would have been necessary for the defendants to shew that the act was that of a trespasser, and was not within the scope of his employment.—*Black v. Christchurch Finance Co.*, L.R. [1894] 1 A.C. 48; 70 L.T. 77.
- (v.) **C. A.—Access for Workman to Work—Refusal to Use Access—Absenting from Work—Employers and Workmen Act, 1875.**—Decision of Q. B. D. (see Vol. 19, p. 15, iii.) affirmed.—*Bowes & Partners v. Press*, L.R. [1894] 1 Q.B. 202; 63 L.J. Q.B. 165; 70 L.T. 116; 42 W.R. 840.

Medical Practitioner :—

- (vi.) **C. A.—"Professional Infamy"—Medical Act, 1850, s. 29—Judicial Inquiry—Bias.**—If a medical man in the exercise of his profession does something which may reasonably be considered disgraceful or dishonourable by his professional brethren of good repute and competency, he is guilty of infamous conduct within the section above-mentioned. A member of the General Medical Council attending an inquiry held at the instance of the Medical Defence Union, had been a member of that Union, but had resigned before the inquiry took place, and had taken no part in preparing the case against the medical man. His resignation had not, by the rules of the Union, taken effect at the time of the inquiry. *Held*, that the decision of the General Medical Council was not invalidated by the presence of such member, and that the Council was right in holding that the medical man had, by certain advertisements, been guilty of professional infamy.—*Allinson v. General Medical Council*, 42 W.R. 289.

Metropolis Management:—

- (i.) **Q. B. D.**—*Building Line—Metropolis Management Act, 1862, s. 75.*—In 1890 the appellant's lessor began to build a shop in accordance with deposited plans, and discontinued building when the walls were about twelve feet high. There were then no buildings in the street. In 1892 he built a row of houses on the same side, standing further back than the shop. In 1893 the appellant, having taken a lease of the site of the shop, without the consent of the respondents continued the erection of the shop. The building line was afterwards fixed to be the line of the houses. *Held*, that the appellant was not entitled to continue the building of the shop in advance of the building line without leave, and that an order to demolish such part as was in advance of the line was rightly made.—*Wendon v. London County Council*, L.R. [1894] 1 Q.B. 227; 63 L.J. M.C. 44; 70 L.T. 94; 42 W.R. 370.
- (ii.) **Q. B. D.**—*Building—Builder Erecting—Notice to—Completion—Metropolitan Building Act, 1855, ss. 45, 46.*—A justice has no jurisdiction to make an order under sect. 46 upon a builder who has completed the building and given up possession of it, although he was engaged in erecting it at the time that notice under sect. 45 was served on him.—*Wallen v. Lister*, L.R. [1894] 1 Q.B. 312; 63 L.J. M.C. 44; 42 W.R. 318.
- (iii.) **Q. B. D.**—*Flagging Footway—Expenses of—Metropolis Management Act, 1890, s. 1.*—The expenses of flagging footways are to be borne by the owners of the houses and land on both sides of the road or street, or on both sides of the section of the road or street, in which the footway is situate.—*Paddington Vestry v. North Metropolitan Railway and Canal Co.*, L.R. [1894] 1 Q.B. 633; 42 W.R. 223.
- (iv.) **Q. B. D.**—*New Streets—Expenses of Paving—Cemetery Company.*—A cemetery company incorporated by Act of Parliament and empowered to sell the exclusive right of burial in vaults in perpetuity or for limited periods are not exempt from payment of their apportioned share of the cost of paving a new street on which their land abuts, upon the ground that their land is not in fact let at a rack-rent, or that the restrictions on the sale of the consecrated portions of it place it *extra commercium*.—*Vestry of St. Giles, Cumberwell v. London Cemetery Company*, 63 L.J. M.C. 74.
- (v.) **C. A.**—*Repairs of Road—Necessity of Works—Metropolis Management Act, 1890, s. 3.*—Decision of Q. B. D. (see Vol. 19, p. 50, iii.) affirmed.—*Stroud v. Wandsworth Board of Works*, 70 L.T. 190; 42 W.R. 355.

Mortgage:—

- (vi.) **Ch. D.**—*Solicitor—Mortgagee—Profit Costs—Agent—Clogging Redemption—Settled Account—Re-opening.*—A solicitor-mortgagee cannot, without express agreement, charge the mortgagor with any profit costs, either for work done as solicitor for the mortgagor in respect of the mortgage, or, where the mortgage is of a life interest, for collecting and distributing the income of the property as agent for the mortgagor; but, *semble*, that the partner of such solicitor may receive remuneration for his trouble. A covenant in a mortgage of a life interest to the mortgagor's solicitor for payment of the sum advanced and "of every other sum of money which may hereafter be advanced or paid by the mortgagee to or on account of or become owing to the mortgagee by the mortgagor" does not include profit costs of the mortgagee, either as solicitor to the mortgagor, or as his agent for receiving and distributing the income, such covenant being as regards such profit costs void as clogging the equity of redemption; and the mortgagor will have leave to surcharge and falsify settled accounts, so far as

regards such profit costs, unless the mortgagee can prove that the mortgagor was at the time made fully aware of his legal rights in respect of those items.—*Eyre v. Wynn Mackenzie*, L.R. [1894] 1 Ch. 218; 63 L.J. Ch. 239; 69 L.T. 823; 42 W.R. 220.

- (i.) **C. A.**—*Trade Fixtures—Hire and Purchase Agreement—Removal.*—E., a nursery gardener, agreed with the defendant to take a boiler and pipes under an agreement to purchase them by instalments, the same to be the defendant's property until the payment of the instalments. The boiler and pipes were fixed in brickwork. E. mortgaged his premises to the plaintiff without notice of the agreement and before the boiler and pipes were fixed. He made default in paying the instalments, and the defendant removed the boiler and pipes. The plaintiff claimed that they had been affixed to the mortgaged property without his consent, and had become part of the soil, and were irremovable as against him. *Held*, that by allowing E. to remain in possession, the plaintiff authorised him to carry on his business, which would include bringing trade fixtures into the premises on the terms of a hiring agreement; and that having regard to this implied authority, to the fact that the fixtures were not the property of E., and that E. was in possession at the date of their removal, the plaintiff's claim failed.—*Gough v. Wood*, 70 L.T. 297.

Nuisance :—

- (ii.) **Ch. D.**—*Overhanging Branches of Trees—Right to Abate.*—To allow the branches of trees to overhang an adjoining property is a nuisance, which the owner of such property is entitled to abate, although the branches have overhung his property for twenty years. But reasonable notice must be given of the intention to abate the nuisance. Damages were granted in a case where the defendant cut away such branches without giving notice.—*Lemmon v. Webb*, 70 L.T. 275.
- (iii.) **C. A.**—*Sewage—Local Authority—Liability for Negligence—Public Health Act, 1875, s. 19.*—Where a public body makes and maintains works under statutory powers for the public benefit, and a person in the course of using the works in exercise of his statutory rights suffers damage, the rights of the individual and the liability of the public body are to be ascertained solely by reference to the statutory provisions under which the works are made and maintained. The plaintiffs were damaged by the overflow of a sewer, belonging to the defendants as the local sanitary authority, with which the plaintiffs' drains were connected under the provisions of the Public Health Act, 1875. The overflow was caused by the increase in the number of drains connected with the sewer, and the defendants had not been guilty of negligence in the construction or maintenance thereof, nor of negligence (in the sense of want of reasonable care and diligence) in not providing another sewer. The plaintiffs sued for damages and an injunction. *Held*, that the action could not be maintained.—*Stretton's Derby Brewery Co. v. Mayor, &c., of Derby*, L.R. [1894] 1 Ch. 431; 63 L.J. Ch. 135; 69 L.T. 791.
- (iv.) **Q. B. D.**—*Thames Conservancy Acts—Liability to Remove Nuisance on Foreshore—Public Health (London) Act, 1891, s. 4.*—It was sought to make the Thames Conservators, as owners of the foreshore of Limekiln Creek, a part of the river within their jurisdiction, liable to abate a nuisance caused there by the accumulation of refuse and filth, as the persons by whose acts the nuisance was caused could not be found. *Held*, that they were not liable, as the nuisance was not caused by their act or default, and they were not authorised to expend their funds in removing such a nuisance, nor required to do so by their Acts.—*Conservators of the River Thames v. Sanitary Authority of the Port of London*, L.R. [1894] 1 Q.B. 647; 69 L.T. 808.

- (i.) **Ch. D.—Urinal—Proper Position—Discretion of Local Authority—Public Health Act, 1875, s. 39.**—Where an urban authority has established a urinal, in the absence of *mala fides*, and assuming that no case of nuisance is made out, the onus lies on persons objecting to show that the site is not proper and convenient, and evidence that there are other sites more proper and convenient is irrelevant. *Quære*, whether the decision of the local authority is not conclusive.—*Pethick v. Mayor, &c., of Plymouth*, 70 L.T. 304; 42 W.R. 246.

Parliament:—

- (ii.) **Q. B. D.—Petition by Subject—Right of Member to Refuse to Present.**—Though it is the right of the subject to petition Parliament, no action will lie against any particular member of Parliament who refuses to present a petition.—*Chaffers v. Goldsmid*, L.R. [1894] 1 Q.B. 186; 63 L.J. Q.B. 59; 70 L.T. 24; 42 W.R. 239.

Partition:—

- (iii.) **Ch. D.—Party Wall—Trespass—Reversioner.**—An order was made at the instance of one of two tenants in common against the wish of the other for the partition, longitudinally and vertically, of the party wall which separated the gardens of two adjoining houses. A tenant in common is entitled as of right to a partition subject to the provisions for sale contained in the Partition Act, 1868. The occupiers of a house and garden, No. 37, pulled down and rebuilt a wall which separated the garden from that of No. 36, and in doing so trespassed on the garden of No. 36, by placing in the soil thereof foundations and footings of the new wall extending further into the garden than those of the old wall. No. 36 was held by a tenant under a lease. *Held*, that as the trespass was of a permanent nature the reversioner was entitled to maintain an action of trespass, although the tenant made no complaint.—*Mayfair Property Co. v. Johnston*, L.R. [1894] 1 Ch. 508.
See Lunatic, p. 90, v.

Partnership:—

- (iv.) **Ch. D.—Liability of Retiring Partner—Banker—Overdraft—Principal and Surety—Release.**—R., in December, 1884, retired from a firm in which he was a partner, and assigned all his interest to his partners, they convenanting to indemnify him against the liabilities of the firm. The B. Bank, to which the firm owed an overdraft, had full knowledge of these circumstances. The overdraft was debited in the books to the new firm. In 1886 the bank resolved that the new firm's account might be for a short time in excess of the nominal limits of £50,000, and in 1889 they resolved that the firm might have an overdraft of £53,000 till March, 1889. The firm afterwards failed. *Held*, that R., after retiring from the firm, was still liable for the balance due to the bank; but that he was liable only as surety, and that by the extension of time granted in 1889 he was released from his liability as surety.—*Rouse v. Bradford Banking Co.*, 69 L.T. 828.
- (v.) **Ch. D.—Share of Profits of Business—Co-Ownership of Realty—Partnership Act, 1890, s. 1, sub-s. 1; s. 2, sub-ss. 1, 3; s. 20, sub-s. 3.**—A testator gave all his residuary estate, comprising three freehold houses and the goodwill and plant of his business, to his two sons equally. The sons carried on the business after his death in two of the freehold houses until the death of one of them. There were no articles of partnership, nor any agreement for a partnership. They kept no accounts, but drew equal weekly sums from the business. They mortgaged all the freehold houses, and spent the mortgage money in the business, and in

adding a portion of the third house to the two in which the business was carried on. *Held*, that there was a partnership in the business, but not in any of the houses.—*Davis v. Davis*, L.R. [1894] 1 Ch. 393; 63 L.J. Ch. 219; 70 L.T. 265; 42 W.R. 812.

- (i.) **Ch. D.—Loss of Capital—Remuneration and Liability of Surviving Partner.**—A business was carried on at a loss for two years, by the survivor of two partners. The deceased partner had supplied all the capital. When the business was wound up the amount realised was not sufficient to repay the whole of the capital. *Held*, that the surviving partner was not liable to contribute to make good the lost capital, but was not entitled to any remuneration for his services.—*Aldridge v. Aldridge*, 42 W.R. 409.

Patent:—

- (ii.) **Ch. D.—Practice—Revocation—Petition—Mode of Trial—Foreigner—Security for Costs—Patents, &c., Act, 1883, s. 26.**—In the case of a petition for the revocation of a patent, the patentee, who was out of the jurisdiction, issued a summons for further and better particulars of objections, and for directions that the petition should be heard on oral evidence. *Held*, that the latter part of the summons was unnecessary, and that he must pay the costs. The petitioner issued a summons that the patentee should give security for costs. *Held*, that as the patentee was brought before the Court as a defendant, he ought not to be ordered to give security.—*In re Miller's Patent*, 70 L.T. 270.

Poor Law:—

- (iii.) **C. A.—Rating—Exclusive Occupation.**—Decision of Q. B. D. (*see* Vol. 19, p. 18, iii.) affirmed.—*Mayor, &c., of Southport v. Ormskirk Assessment Committee*, 63 L.J. Q.B. 250; 69 L.T. 852.
- (iv.) **Q. B. D.—Rating—Valuation List—Approval of—Time—Union Assessment Committee Acts, 1862, s. 18; 1864, s. 1.**—An assessment committee approved a valuation list before the expiration of the twenty-eight days within which ratepayers could give notice of objections after the public notice of deposit of the list had been issued. *Held*, that the valuation list and the rate or assessment based on it were bad.—*Reigate Union Assessment Committee v. S.E.R.*, L.R. [1894] 1 Q.B. 411; 63 L.J. M.C. 65.

Power:—

- (v.) **Ch. D.—General Power of Appointment—Exercise by Will—Effect of.**—A testatrix having a general power of appointment over real estate, gave all the real and personal estate which she might be possessed of or entitled to, or of which by virtue of any power or authority she was competent to dispose "in manner following"; and then after specific devises and bequests she gave the property forming the subject of the power to her husband, and made him her residuary legatee. She made no distinction between the property over which she had the power, and her own property. Her husband predeceased her. *Held*, that she had made the property subject to the power her own for all intents and purposes; and that it went to her heirs, and not as in default of appointment.—*Coxen v. Rowland*, L.R. [1894] 1 Ch. 406; 63 L.J. Ch. 179; 70 L.T. 89.
- (vi.) **Ch. D.—Power of Sale—Duration—Remoteness.**—Where a deed or will limits real and personal estate to one for life, and upon the death of the tenant for life upon trust for division, with power or authority to the trustees to sell at such times as they shall think fit, such power of sale is not void for remoteness, but may be exercised within a reason-

able time after the death of the tenant for life, and after the property has become absolutely vested in possession, if on the construction of the instrument it appears to be the intention of the settlor or testator that it should be then exercised.—*In re Lord Sudeley and Baines*, L.R. [1894] 1 Ch. 334; 62 L.J. Ch. 194; 42 W.R. 231.

Practice:—

- (i.) **C. A.—Costs—Prohibition—Rule absolute without Pleadings—Supreme Courts of Judicature Act, 1890, ss. 4, 5.**—The right to grant prohibition not being a jurisdiction belonging exclusively to the Crown side of the Queen's Bench Division, the High Court, in making a rule absolute for a prohibition without pleadings, may make an order for costs.—*Reg. v. Justices of the County of London and the London County Council*, L.R. [1894] 1 Q.B. 453; 70 L.T. 148.
- (ii.) **C. A.—Costs—To Abide "Result" of New Trial—Certificate.**—In an action for false imprisonment, the Court of Appeal, in ordering a new trial, directed that the costs of the former trial should abide the result of the new trial. In the new trial the jury found a verdict for the plaintiff, damages one farthing, and the judge refused to give a certificate for costs. *Held*, that the "result of the new trial" meant the result as to costs, and that the plaintiff was not entitled to costs of the former trial.—*Brotherton v. Metropolitan District Railway Joint Committee*, L.R. [1894] 1 Q.B. 666; 70 L.T. 218; 42 W.R. 273.
- (iii.) **P. C.—Estoppel—Incorrect Judgment Roll.**—Where the judgment roll in an action, as made up, does not correctly represent that which was really found at the trial, a court of equity ought not, in subsequent proceedings between the same parties, to grant an injunction to enforce a right which was not established by any finding of the jury in the former action, notwithstanding what appears on the face of the judgment roll.—*Want v. Moss*, 70 L.T. 178.
- (iv.) **Ch. D.—Further Consideration—Report of Official Referee—No Motion to Vary—R.S.C., 1883, O. xxxvi., r. 54.**—When, on the further consideration of an action, one party asks the Court to adopt the report of the official referee made in the action, the Court will not, at the request of the other party, go behind the report and look into the evidence on which it was based, where such party has given no notice of motion to vary the report or remit the matter for re-hearing.—*Hardy v. Fitton*, 63 L.J. Ch. 164; 42 W.R. 281.
- (v.) **Q. B. D.—Interpleader—District Registry—R.S.C., 1883, O. xxxv., r. 6.**—A district registrar has no jurisdiction to make an interpleader order.—*Hood v. Yates*, L.R. [1894] 1 Q.B. 240; 63 L.J. Q.B. 218; 42 W.R. 412.
- (vi.) **Q. B. D.—Mayor's Court—Security for Costs of Appeal—Mayor's Court Act, 1857, s. 8.**—The deposit of a security for the costs of appeal from the Mayor's Court is the condition precedent to the right to appeal, and not a mere matter of procedure, and is not superseded by any High Court rule which only affects procedure; and the failure to make the deposit is sufficient to sustain a preliminary objection to the appeal.—*Morgan v. Bowles*, L.R. [1894] 1 Q.B. 236; 63 L.J. Q.B. 84; 42 W.R. 269.
- (vii.) **C. A.—Pauper—County Court Appeal—R.S.C., 1883, O. xvi., r. 22; O. lxviii., r. 1.**—Leave to proceed as a pauper may be granted to a person appealing from a county court.—*Clements v. L. & N.W.R.*, 42 W.R. 388.

- (i.) **C. A.**—*Pauper—Notice of Motion—Signature of Solicitor—R.S.C.*, 1883, O. xvi., r. 29—*Costs*.—A person who has been admitted to sue in *forma pauperis*, and to whom no solicitor has been assigned, may serve a notice of motion, signed by himself. Where a plaintiff suing in *forma pauperis* does not appear, and the case is accordingly struck out, the Court may order him to pay the costs thrown away as a condition of allowing the case to be re-instated.—*Jacobs v. Crusha*, 42 W.R. 887.
- (ii.) **Ch. D.**—*Payment into Court—Order for—Verbal Admission, R.S.C.*, 1883, O. xxxii., r. 6.—An order for payment of money into Court may be made against a defendant, who has verbally admitted that he has such money in his possession or under his control. Upon a motion for such an order an affidavit proving the submission was made. A copy of the affidavit was served on the defendant with the notice of motion, which stated that the affidavit would be read at the hearing of the motion. The defendant did not answer the affidavit, and did not appear at the hearing of the motion. *Held*, that the order should be made.—*French v. Sprouston*, L.R. [1894] 1 Ch. 499; 70 L.T. 160; 42 W.R. 877.
- (iii.) **C. A. & Q. B. D.**—*Security for Costs—Foreigner Suing on Foreign Judgment—R.S.C.*, 1883, O. lxx., r. 6.—A foreigner resident abroad brought an action on a French judgment, obtained in an action which had been defended in the French Courts, and in bringing which the plaintiff had given security for costs. Upon an affidavit by the defendant alleging fraud on the part of the plaintiff, leave was given to defend, and a defence and counter-claim were put in. *Held*, that the plaintiff ought to be ordered to give security for costs.—*Crozat v. Brogden*, 42 W.R. 317 and 353.
- (iv.) **Q. B. D.**—*Sequestration—Judgment—Order for Payment—R.S.C.*, 1883, O. xli., r. 5; O. xliii., rr. 3, 6; O. xliii., r. 6.—A judgment having been recovered against a married woman, the master made an order directing her to pay the amount within ten days, and, in default of payment, giving leave to issue a writ of sequestration against her separate property. *Held*, that there was no jurisdiction to make such an order.—*Hurlbert v. Cathcart*, L.R. [1894] 1 Q.B. 244; 63 L.J. Q.B. 121.
- (v.) **C. A.**—*Sequestration—Costs—R.S.C.*, 1883, O. xliii., r. 7.—An order giving leave to issue a writ of sequestration forthwith to enforce the payment of costs may be made without the necessity of first obtaining a four-day order limiting the time within which the costs must be paid.—*In re Lumley*, 42 W.R. 401.
- (vi.) **C. A.**—*Writ—Service—Foreign Firm—Business within Jurisdiction—R.S.C.*, 1883, O. xlviii. a, rr. 1, 3, 8.—A writ may be issued without leave against a foreign firm, the partners of which reside out of the jurisdiction, if they carry on business within the jurisdiction.—*Worcester City and County Banking Co. v. Firbank, Pauling & Co.*, 70 L.T. 102; 42 W.R. 402.
- (vii.) **Ch. D.**—*Service out of Jurisdiction—R.S.C.*, 1883, O. xi., r. 1 (d)—*Construction of Rule*.—It is a condition precedent to the service of a writ out of the jurisdiction under the rule above-mentioned, that there is property situate within the jurisdiction; and the period at which there must be such property is, either when leave is asked to effect service, or possibly when service is actually effected; or at the latest when an application is made to set aside the service. *Semble*, if an action is properly commenced, other property subsequently coming within the jurisdiction can be dealt with in the action without the issue of a fresh writ.—*Winter v. Winter*, L.R. [1894] 1 Ch. 421; 63 L.J. Ch. 165; 69 L.T. 759.

- (i.) **C. A.**—*Writ Indorsed for Liquidated Demand—Reduction by Payment—Judgment in Default—Amount*—R.S.C., 1883, O. xiii., r. 3.—When a writ of summons is indorsed for a liquidated demand, which is reduced by payment after issue of the writ, judgment in default of appearance ought only to be issued for the amount actually due, and the defendant is entitled to have any judgment for a larger amount set aside.—*Hughes v. Justin*, L.R. [1894] 1 Q.B. 667; 42 W.R. 339.
- (ii.) **Q. B. D.**—*Specially Indorsed Writ—Sufficiency—Amendment—Marking Amended Documents—Appearance*—R.S.C., 1883, O. iii., r. 6 (F); O. xxviii., rr. 9, 10.—In action by the successor in title to a lessor to recover from the lessees premises of which the lease had expired, a specially indorsed writ was amended by order, and as amended stated the date of the lease, the length of the term, and its devolution. The copy served omitted to state the length of the term, and was not marked with the dates of the order for amendment and of the amendment, which dates were marked on the writ. The defendant did not enter a fresh appearance to the amended writ. *Held*, that the copy served was sufficiently indorsed; that the omission to mark the dates on the copy was not material; and that the appearance of the defendant to the original writ stood as a good appearance to the amended writ.—*Hanner v. Clifton*, L.R. [1894] 1 Q.B. 238; 42 W.R. 287.
- (iii.) **P. C.**—*Writ Specially Indorsed—Ejectment—Estoppel*.—In an action of ejectment, in which the circumstances under which the tenant came into possession are in dispute, judgment ought not to be signed under an order of the New Zealand Court, which is identical with Order xiv. of the English Rules of Court. A plaintiff in an ejectment cannot rely on an alleged estoppel on the part of the defendant to relieve him from the necessity of proving his own title, when the facts out of which such estoppel arises are in dispute.—*Jones v. Stone*, 70 L.T. 174.
- (iv.) **Q. B. D.**—*Writ Specially Indorsed—Affidavit—Sufficiency of*.—Upon an application for leave to enter final judgment upon a writ specially indorsed with a claim for the amount of a dishonoured cheque, the affidavit verifying the cause of action need not allege that notice of dishonour was given to the drawer.—*May v. Chidley*, L.R. [1894] 1 Q.B. 451.
- (v.) **C. A.**—*Writ—Specially Indorsed—Lease—Forfeiture—Claim for Possession*—R.S.C., 1883, O. iii., r. 6 (F); O. xiv., r. 1.—A lessor gave his lessee notice to quit, under a proviso in the lease which gave power so to do on the rent being in arrear. *Held*, that the lessor could not sign final judgment under O. xiv., r. 1, in an action for recovery of the premises.—*Arden v. Boyce*, 42 W.R. 354.

Public Health:—

- (vi.) **Q. B. D.**—*Diseased Meat—Evidence of Knowledge of Owner—Public Health Act, 1875, s. 117*.—A person having in his possession diseased meat exposed for sale can be convicted under the section above-mentioned, without proof of actual knowledge that the meat was so diseased.—*Blaker v. Tillstone*, L.R. [1894] 1 Q.B. 345; 63 L.J. M.C. 72; 70 L.T. 30; 42 W.R. 253.

Quarter Sessions:—

- (vii.) **Q. B. D.**—*Continuing Court—Consent to Tax out of Sessions*.—A court of quarter sessions is a continuing court from sessions to sessions. The effect of an order for costs made at quarter sessions in July may be determined by a Court held in the following January. A consent

to the general practice for the clerk of the peace to tax out of sessions the costs of the successful party in an appeal to quarter sessions may be implied, although such consent was not either applied for or granted in terms.—*Midland Railway Co. v. Edmonton Union*, 63 L.J. M.C. 38.

Railway :—

- (i.) **Q. B. D.**—*Carriage of Goods—Loss by Theft of Company's Servant—Liability for*—*Railway and Canal Traffic Act, s. 7.*—The loss of goods by the theft of a railway company's servant, without negligence on the part of the company, is not a loss "occasioned by the neglect or default of the company or its servants" within the meaning of the section above mentioned, and therefore the company can at common law protect themselves against liability by a special contract, although such contract is not reasonable within the requirements of the Act.—*Shaw v. G.W.R.*, L.R. [1894] 1 Q.B. 373; 70 L.T. 219; 42 W.R. 285.
- (ii.) **Q. B. D.**—*Cloak-Room Charges—Goods deposited by Hirer—Lien—Reasonable Facility*—*Railway and Canal Traffic Act, 1854, s. 2.*—A cloak-room is a "reasonable facility" for the receipt and forwarding of traffic which a railway company is bound to afford, and therefore goods received thereat are received by the company as common carriers, and the company are entitled to a lien for their charges, even when the goods are deposited by a person who is not the true owner.—*Singer Manufacturing Co. v. L. & S.W.R.*, 70 L.T. 172; 42 W.R. 347.
- (iii.) **C. A.**—*Compensation—Injurious Affecting Land—Compensation once Awarded—Further Injury.*—Decision of Q. B. D. (see Vol. 19, p. 21, iii.) reversed.—*Attorney-General v. Metropolitan Railway Co.*, L.R. [1894] 1 Q.B. 384; 69 L.T. 811; 42 W.R. 381.
- (iv.) **P. C.**—*Construction—Accommodation Works.*—A colonial Act, confirming a provisional agreement for the making of a railway, empowered the promoters to take land, but enacted that the Government were to pay the compensation, and were to conduct the proceedings for fixing the amount thereof. The promoters were to construct and maintain such accommodation works as might be fixed by agreement with the owners of land taken at the time of ascertaining the compensation. *Held*, that the Government had power to bind the promoters without their consent, and against their express instructions, to construct such accommodation works as were reasonably necessary.—*West India Improvement Co. v. Attorney-General for Jamaica*, 70 L.T. 80.
- (v.) **Ch. D.**—*Right to Support—Mines—Railways Clauses Act, 1845, ss. 77, 78.*—A tramway was constructed under a private Act in 1825. By the Act mines were to be deemed to be excepted out of any conveyance, and might be worked by the owners, though not so as to injure the tramway. In 1855 by a private Act the earlier Act was repealed, and provisions were made for altering the tramway so as to be suitable for locomotive engines. The Railways Clauses and Lands Clauses Acts were incorporated, but it was provided that the Act should be without prejudice to anything done under the earlier Act. The defendants caused subsidence by working the mines under the line, and claimed to be entitled to do so unless the mines were purchased under the Railways Clauses Act. *Held*, that the bargain as to the working of the mines made in the Act of 1825 still held good, although the line was differently used; that the rights under that Act were reserved by the Act of 1855; and that the defendants must be restrained from working their mines so as to injure the line.—*G.W.R. v. Cefn Cribbwr Brick Co.*, 70 L.T. 279.

- (i.) **Railway Commission Court.**—*Reasonable Facilities for Traffic—Order to keep open Passenger Station—Railway and Canal Traffic Act, 1854, s. 2.*—The company, finding that a certain branch line was little used for passenger traffic, discontinued running passenger trains thereon, and removed a station. There were stations on the main line about a mile distant from such station. *Held*, that the Court had power to direct a station to be kept open, and that as there had been a substantial amount of passenger traffic upon the branch line, the company must provide reasonable facilities for the same by re-opening the station and running passenger trains on the branch line.—*Darlaston Local Board v. L. & N.W.R.*, 69 L.T. 866.

Registration :—

- (ii.) **C. A.**—*Borough Vote—Register—Description of Qualification—Amendment—Parliamentary, &c., Registration Act, 1878, s. 28, sub-ss. 2, 13.*—H. claimed to be placed in Division I. of the list of voters as a parliamentary voter and burgess. The claim stated the nature of the qualification as "dwelling-house, successive," and described the qualifying property as two houses. H. had lived in one only of such houses during the qualifying period. *Held*, that the qualification in respect of the occupation of one house is different from that in respect of the occupation of two in succession, and that the revising barrister could not amend the claim by striking out the word "successive" and the house in which H. had not lived.—*Hurcum v. Hilleary*, L.R. [1894] 1 Q.B. 579; 63 L.J. Q.B. 254. *Hurcum v. Town Clerk of West Ham*, 70 L.T. 29. *Mann v. Johnson*, 63 L.J. Q.B. 94; 70 L.T. 29.
- (iii.) **C. A.**—*Borough Vote—Service of Notice of Objection—Stamped Duplicate—"Ordinary Course of Post"—6 and 7 Vict., c. 18, ss. 17, 100.*—Notices of objection to voters were posted addressed to barracks where the voters resided. According to the regulations, letters thus addressed are not delivered at the barracks by postmen, but taken there from the post-office by orderlies. The notices were brought to the barracks by orderlies on August 19th, when the voters were absent in camp, and were not sent on till August 21st. *Held*, that "ordinary course of post" means the general course of post with regard to the delivery of letters to persons resident in the district; and that as in such course of post the notices would have been delivered at the barracks on or before August 20th, but for the special military arrangements, the service thereof on or before August 20th was proved by the production of duplicate notices stamped at the post-office.—*Kemp v. Wanklyn*, L.R. [1894] 1 Q.B. 583; 42 W.R. 369.
- (iv.) **Q. B. D.**—*Occupier—House not Rated.*—The inhabitant occupier of a house, which, though rateable, has not been rated to a poor-rate made during the qualifying period, and in respect of which such rate has not been paid, is not entitled to either the parliamentary or the municipal franchise.—*Palmer v. Wade*, L.R. [1894] 1 Q.B. 268.

Restraint of Trade :—

- (v.) **Ch. D.**—*Agreement not to Carry on Business—Wife trading separately.*—The defendant, who had carried on the business of a grocer under the name of "J. P. Hancock," sold the business to the plaintiff, and agreed not to "carry on or be in anywise interested in" any similar business within a named area. The defendant's wife (against his wishes) desired to start her nephew in business, and opened a grocer's shop within the area under the name of "Mrs. J. P. Hancock." The defendant took no part in the business, which was managed by his wife's nephew, with some aid from her. She found the capital out of her separate estate, and the defendant took no share in the profits.

He assisted his wife to obtain a lease of the shop, wrote a circular to "old friends," and distributed a few copies of the circular. He also introduced the nephew to provision merchants, and attended the bank when his wife opened an account in her own name for the business. *Held*, that the defendant had not broken the agreement.—*Smith v. Hancock*, L.R. [1894] 1 Ch. 209; 68 L.J. Ch. 201; 70 L.T. 168.

Revenue:—

- (i.) **C. A.—Stamp—Conveyance on Sale—Amalgamation of Railways.**—A private Act provided that two railway companies should be amalgamated with the Great Western Railway Company. The shareholders in one of such companies were, in exchange for their shares, to become holders of guaranteed stock of the Great Western Railway Company in certain specified proportions. In the case of the other company the consideration was to be the payment by the Great Western Railway Company of the principal and interest of certain outstanding debentures. A copy of the Act was to be chargeable with the same stamp duty as would have been chargeable had the transaction been effected by a written instrument. *Held*, that the transaction was in effect a transfer on sale, and that the copy of the Act was chargeable as an executed instrument under the head "Conveyance or transfer on sale" in the Schedule to the Stamp Act, 1891, with *ad valorem* duty in respect of the value of the guaranteed stock issued to shareholders of the first company, and with *ad valorem* duty in respect of the value of the outstanding debentures of the second company.—*G.W.R. v. Commissioners of Inland Revenue*, L.R. [1894] 1 Q.B. 507; 70 L.T. 86; 42 W.R. 211.
- (ii.) **C. A.—Stamp—Conveyance—Stamp Act, 1870, s. 70, and Schedule.**—Decision of Q. B. D. (*see* Vol. 19, p. 58, i.) reversed.—*Foster and Co. v. Commissioners of Inland Revenue*, L.R. [1894] 1 Q.B. 516; 68 L.J. Q.B. 178; 69 L.T. 817.

Right of Way:—

- (iii.) **Ch. D.—Grant of—Defined way—Limitation of User—Interference.**—The plaintiff purchased Nos. 1, 2, and 3, H. cottages, and land in rear thereof, which property was conveyed by deed, together with a right of way on foot along the passage coloured blue on a plan, which ran from F. Lane along the south side of No. 3 H. cottages to the plaintiff's land. The land was at the date of the deed, and had ever since been, used as a nursery garden. The passage was in general three feet wide, but increased to 10 feet wide, where it reached the plaintiff's land, into which a three feet gate opened from it. The defendant erected a building partly on the wider part of the passage, which reduced the frontage of the plaintiff's land to the way by seven feet, and prevented the plaintiff from having any access to the way except through an opening occupying the exact site of the said gate. *Held*, that the grant of the footway was not limited to a way suitable for the occupation of the land as a nursery garden, but gave a right to the user of the whole of the way for any reasonable purpose; and that the plaintiff was entitled to have access to the way, not only through the gate, but at any point convenient to himself. *Held*, therefore, that the plaintiff was entitled to a mandatory injunction to the defendant to remove his building, as a substantial interference with his right of way.—*Sketchley v. Berger*, 69 L.T. 754.

Sale of Goods:—

- (iv.) **C. A.—Wheat to be Shipped—3,000 Tons more or less—Payment against Bills of Lading—Tender—Refusal.**—By a contract in writing K. bought from B. "about 3,000 tons of wheat (10 per cent. more or less) to be

shipped by steamer." Payment was to be made in cash in exchange for bills of lading. There were provisions as to price of the quantity by which the shipment exceeded or fell short of the medium quantity of 3,000 tons. B. told K. that he had shipped 3,800 tons, and that he appropriated 3,000 tons thereof to his contract with K., and sent him an invoice for 3,000 tons. The bills of lading of the 3,800 tons were two for 1,750 tons each, and two for 150 tons each. B. offered to deliver to K. either all the bills of lading, or the two for 1,750 tons each, but K. refused to accept the tender, or to make any payment. *Held*, that the buyer was entitled to have bills of lading for the exact amount bought, and that he was justified in refusing the tender.—*In re Arbitration between Keighley, Maxted, & Co. and Bryan, Durant & Co.*, 70 L.T. 155.

Settled Land:—

- (i.) **Ch. D.—Capital Money—Improvement—Alteration—Settled Land Acts, 1882, s. 25; 1890, s. 13, sub-s. ii.**—The providing of a heating apparatus, though rendering a mansion-house more comfortable, is not an "improvement," nor an "addition or alteration in the building," so as to authorise the expenditure of capital money thereon. But the providing of a new roof in place of a worn-out one, and the re-arrangement of the main entrance, are "alterations" which, if reasonably necessary and proper, may be paid for out of capital.—*In re Gaskell's Settled Estates*, L.R. [1894] 1 Ch. 485; 63 L.J. Ch. 243; 42 W.R. 219.
- (ii.) **Ch. D.—Rebuilding—Annual Rental—Settled Land Act, 1890, s. 13, sub-s. iv.**—The alteration, reconstruction, and enlargement of a mansion-house, where part of the house was unaltered, and the walls of another part were utilised, *held*, to be a "re-building" within the section above-mentioned. The "annual rental" within the meaning of the proviso does not include anything in respect of land in the occupation of the tenant for life, but includes the amount of rent usually paid for a farm temporarily unoccupied.—*In re Walker's Settled Estate*, L.R. [1894] 1 Ch. 189; 70 L.T. 259.

Settlement:—

- (iii.) **Ch. D.—Wife's Property—Ultimate Trust—"Without having been married."**—In a marriage settlement, the ultimate trust of the wife's property was, in default of appointment, for such persons as under the statutes for the distribution of intestates' estates, would, on her death, have been entitled thereto, if she had died possessed thereof intestate "and without having been married." The wife died without appointment, and leaving one child of the marriage. *Held*, that such child was entitled.—*Stoddart v. Saville*, L.R. [1894] 1 Ch. 480; 42 W.R. 361.

Ship:—

- (iv.) **C. A.—Charter-party—Construction of—Sale at Port of Distress—German Law.**—By a charter-party made in English form, between the London broker of a German shipowner and London merchants, it was provided that a German ship should load a cargo of rice, and proceed to named British ports for orders to discharge in the United Kingdom or on the Continent. The freight to be paid on delivery of cargo. On the voyage the ship had to put into port and part of the cargo being damaged by sea-water was condemned and sold. The shipowner claimed that full freight was, by the law of the flag, payable on the part so sold. *Held*, that the intention of the parties was to make an English contract, that the charter-party fully provided for freight, and that the charterers were not liable for any freight on the part of the cargo so sold at the port of distress.—*The Industrie*, L.R. [1894] P. 58; 42 W.R. 280.

- (i.) **C. A.**—*Charter-party—Demurrage*—"Restraints of Princes and Rulers."—Decision of Q. B. D. (see Vol. 19, p. 61, i.) affirmed.—*Smith and Service v. Rosario Nitrate Co.*, L.R. [1894] 1 Q.B. 174; 70 L.T. 68.
- (ii.) **P. D.**—*Charter-party—Disbursements at Foreign Port—Advance*.—In the charter-party of a ship it was provided "Cash for ordinary disbursement at port or ports of loading; not exceeding £150 in all to be advanced" at a stated exchange. *Held*, that the shipowner was not bound to take an advance of the whole £150, so that if he did not require the whole of that sum, the charterer could not claim to be recouped the profit he would have made by exchange on an advance of the whole sum.—*The Primula*, L.R. [1894] P. 128; 70 L.T. 253.
- (iii.) **C. A.**—*Charter-party—Lump sum for Freight—Lien for*.—By a charter-party by which a ship was chartered at a lump sum for freight, it was provided that the charterers might re-charter the ship at any freight without prejudice to the charter-party. It also provided that the liability of the charterer should cease on the vessel being loaded, the owner to have a lien on the cargo for all freight under the charter-party. The ship was re-chartered, and a bill of lading was given by which freight was to be paid at a certain rate per ton on the cargo as delivered. The cargo diminished during the voyage, and the bill of lading freight did not cover the lump freight under the charter-party. *Held*, that the charterers was only relieved from liability to the extent to which the shipowner had obtained a lien for freight on the cargo, and that they were liable to pay the difference between the bill of lading freight and the lump freight.—*Hansen v. Harrold Brothers*, L.R. [1894] 1 Q.B. 612.
- (iv.) **C. A.**—*Consignee for Sale—Liability for Freight—Merchant Shipping Act, 1862, ss. 66, 72*.—The statute above-mentioned preserves the liability which (apart from the deposit made under its provisions) would have been incurred before the Act by an agent for sale to pay the bill of lading freight upon delivery of goods consigned to him for sale.—*Furniss, Withy & Co. v. White & Co.*, L.R. [1894] 1 Q.B. 483; 42 W.R. 290.
- (v.) **P. D.**—*Contract for Employment—Mortgagee without Notice—Sale by—Purchase with Notice—Effect of—Certificate of Registry*.—The owner of a ship entered into a contract with the defendant for her employment for a term of years. He then mortgaged her to persons who had no notice of the contract. He made a second mortgage to the plaintiff, who had notice. The first mortgagees sold her under their power of sale to the plaintiff. The defendant, who had possession of the ship's certificate of registration, refused to deliver it to the plaintiff, and claimed that the ship was bound by the contract. *Held*, that the plaintiff was entitled to have the certificate delivered to him; and that the first mortgagees, having taken their mortgage without notice of the contract, were entitled to sell the ship free from the same, and that the plaintiff was entitled to take the position of his vendors.—*The Celtic King*, 63 L.J. P. 37.
- (vi.) **C. A.**—*Insurance—Collision Clause—Proviso*.—The plaintiffs' ship collided with another ship in the river Scheldt, and the latter was sunk. The Belgian authorities removed the wreck, and charged the owners with the expenses. The plaintiffs paid half this sum to the owners of the sunken ship, after a reference in the Admiralty registry, which followed an admission that both ships were to blame. The plaintiffs sued their insurers on the collision clause of their policy to recover such payment. The clause contained the proviso "that this clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory

powers consequent upon such collision." *Held*, that the proviso applied, and that the insurers were not liable.—*The North Britain*, L.R. [1894] P. 77; 63 L.J. P. 33; 70 L.T. 210; 42 W.R. 243.

- (i.) **P. D.—Insurance—Freight—Valued Policy.**—The plaintiffs, owners of a ship, then on an outward voyage, took out a policy of insurance on freight, at an agreed valuation, in the said ship on her homeward voyage, the insurance to commence from the loading of the cargo. The vessel met with an accident on the outward voyage, and was detained at the port of discharge for repairs. Some cargo was engaged before the date of the policy for the homeward voyage, part being loaded at the original rate of freight, and the remainder cancelled. More cargo was shipped at lower rates of freight, and the vessel sailed with a full cargo. She was burnt on the homeward voyage, and the freight lost. *Held*, that the policy covered the freight at risk, and that the valuation was binding on both parties with regard to what was actually at risk under the policy.—*The Main*, 70 L.T. 247.
- (ii.) **C. A.—Insurance—General Average—Foreign Adjustment—Particular Average.**—Where a policy contains the clause "general average as per foreign statement," the assured cannot recover as particular average items of expenditure included as general average in the foreign statement. In such a case all expenses which are decided by the foreign adjuster to be general average must be so treated, not only as between the respective owners of ship and cargo, but also as between them and their respective underwriters.—*The Mary Thomas*, L.R. [1894] P. 108; 63 L.J. P. 49.
- (iii.) **P. D.—Necessaries—Action for—Priorities.**—Where several actions *in rem* for necessities have been commenced, and the ship having been sold, the proceeds are not sufficient to pay all the claimants, the plaintiff in the first action has no priority; but the proceeds will be held *pro rata* for, at least, all the creditors of the same class, who assert their claims before any unconditional decree. *Semble*, that a decree in unconditional terms would, so long as there are any funds in the hands of the Court, be modified so as to let in others, who, without laches, put forward claims of a like character.—*The Africano*, L.R. [1894] P. 141; 70 L.T. 250; 42 W.R. 413.

Solicitor:—

- (iv.) **Q. B. D.—Costs—Taxation—Agreement in Writing—Payment.**—The plaintiff's solicitor settled an action, in which the plaintiff had obtained judgment, but the defendant had appealed, on the terms of the payment by the defendant of £210 damages and £120 costs. He explained the terms to the plaintiff and paid her £210. She signed a document by which she agreed to allow him the sum already paid by her to him for costs as an equivalent for the abatement in costs which he had made to the defendant. Such sum amounted to £55 16s. The solicitor delivered her a cash account containing on the credit side £330 and £55 16s., and on the debit side £210, and "amount of agreed costs" £175 16s., i.e., £120 and £55 16s. *Held*, that the plaintiff was not entitled to an order for taxation, for the document amounted to an agreement in writing within the Attorneys and Solicitors Act, 1870, s. 4, and the transaction amounted to payment within the meaning of 6 & 7 Vict., c. 73, s. 41.—*In re Thompson*; *e. p. Baylis*, L.R. [1894] 1 Q.B. 462; 63 L.J. Q.B. 187; 70 L.T. 238.
- (v.) **C. A.—Costs—Taxation—Costs of Taxation—Special Circumstances—Solicitors Act, 1843, s. 37.**—A solicitor delivered to two surviving trustees a bill, the items of which amounted to £44 2s. 8d., but at the foot of the bill was written "By allowance £7 2s. 8d.," thus reducing

the amount to £37. More than one-sixth of the larger amount was disallowed on taxation, but the taxing-master certified that he had disallowed many items as being for work which the trustees ought to have performed themselves, but that it had been pointed out to him that, owing to friction between the trustees, the deceased trustee had several times refused to meet his co-trustees, and had expressly instructed the solicitor to do the work in respect of which the disallowed items had been charged, and that he was of opinion that under the circumstances the solicitor ought to be allowed the costs of taxation. *Held*, that the bill ought to be taxed as a bill for £44 2s. 8d., and that the solicitor ought to be allowed the costs of taxation.—*E. p. Short*; *in re Mackenzie*, 69 L.T. 751.

- (i.) **Ch. D.**—*Taxation—Order of Course—Abortive—Second Order.*—Where an order of course for taxation has become abortive, owing to delay, it is irregular for the client to obtain a second order of course, *ex parte*, and without mention of the first order. Another order for taxation can only be obtained upon a special application and on the terms of paying the solicitor's costs of the former proceedings.—*In re Taylor, Sons, and Tarbuck*, L.R. [1894] 1 Ch. 503; 70 L.T. 161; 42 W.R. 829.
- (ii.) **Ch. D.**—*Lien for Costs—Marriage Settlement.*—A solicitor, preparing a marriage settlement upon the instructions of the husband, and subsequently retaining possession of it, has no lien upon it as against the trustees for his costs, but is bound to deliver it to them at their request.—*Bowker v. Austin*, L.R. [1894] 1 Ch. 556; 63 L.J. Ch. 205; 70 L.T. 91; 42 W.R. 265.
- (iii.) **Q. B. D.**—*Professional Misconduct—Borrowing from Client just of Age.*—A solicitor borrowed the sum of £69,600 from a client who had attained the age of twenty-one just before the first transaction between them. The client had no independent advice, and left the conduct of his affairs entirely to the solicitor. *Held*, that though the solicitor had not been guilty of actual dishonesty, he had been guilty of such professional misconduct as to require his suspension from practice for two years.—*In re A Solicitor*, L.R. [1894] 1 Q.B. 254; 70 L.T. 27; 42 W.R. 237.
- (iv.) **C. A.**—*Trustee—Professional Charges—Opening Settled Accounts.*—S. and S., the trustees and executors of a will, who were solicitors, and were authorised to charge for professional business done for the estate, wound up the estate and sent an account to the five residuary legatees, inviting them to call and receive their shares, and offering any explanations they might require. The account was not complicated, and contained an item "Paid to Messrs. S. & Co. costs, &c." The residuary legatees signed the account, received cheques for their shares, and executed a release to the trustees. S. and S. did not inform them that they were entitled to have a bill of costs delivered and taxed. Nine years afterwards some of the residuary legatees sought to have the release set aside, and a bill of costs delivered and taxed. *Held*, that though S. and S. ought to have informed the legatees that they were entitled to have a bill of costs delivered and taxed, the omission to do so was not a sufficient ground for opening a settled account; that in order to do so it was necessary to show that injustice would be done by allowing the account to stand; that if excessive charges had been shewn, the account must have been opened; but that as the evidence failed to shew such excessive charges, the account ought to be allowed to stand.—*Lambert v. Still*, L.R. [1894] 1 Ch. 73; 63 L.J. Ch. 145.
- (v.) **C. A.**—*Undertaking—Enforcement—Undertaking to Repay Costs if Appeal Succeeds.*—Where execution is stayed pending an appeal upon the terms of the appellant paying the taxed costs to the respondent's

solicitor, the latter giving his personal undertaking to repay them if the appeal should succeed, the undertaking can, in the event of the appeal succeeding, be enforced in a summary manner, although execution is stayed pending a further appeal. — *Swyny v. Harland*, 70 L.T. 227; 43 W.R. 297.

Tithe :—

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- (ii.) **Ch. D.**—*Descriptive Word*—"Person Aggrieved"—*Patents, &c., Act, 1883, s. 10, sub-s. 1 (d) (e)*.—*Held*, that "Emolliolorum" as applied to a preparation for rendering leather supple and waterproof, is a descriptive word, and not a fancy word, and is not capable of registration as a trade mark. *Held*, also, that the applicants, who manufactured a dressing for leather, and might be hampered in their business by the registration of the word, were "persons aggrieved."—*In re Talbot's Trade Mark*, 70 L.T. 119.
- (iii.) **C. A.**—*Descriptive Word*—*Patents, &c., Act, 1883, s. 64, sub-s. 1 (c)*; 1888, s. 10.—*Held*, that "Somatose," as applied to an article of concentrated food, was a descriptive, and not an invented word, and not capable of registration.—*In re Trade Mark Application of Farbenbriken, Vormals, Friedr. Berger & Co.*, 70 L.T. 186.
- (iv.) **H. L.**—*Old Mark*—*User*—*Persons Aggrieved*—*Patents, &c., Act, 1883, ss. 64, 90*.—Decision of **C. A.** (see Vol. 19, p. 27, i.) affirmed.—*Powell v. Birmingham Vinegar Brewery Co.* L.R. [1894] A.C. 8; 63 L.J. Ch. 152; 70 L.T. 1.
- (v.) **Ch. D.**—*Foreign Company*—*Fancy Name*—*Similar Name*—*Foreign User*—*Absence of Fraud*.—In the absence of fraud a company is not entitled to restrain a foreign company from trading in England under the name conferred upon it by the Legislature of the country in which it is incorporated, though the name is a fancy name and similar to that of the English company, provided it is used without any modification. Where a foreign company bearing a name so conferred was trading in England, and disclaimed any dishonest intention against an English company bearing a similar name, but in the documents circulated among its agents its name was used in abbreviated forms the user of which might lead to the injury of such English company, and the instructions to such agents did not expressly forbid such user, the Court, in order to give the foreign company an opportunity of giving instructions to its agents not to use such abbreviated or modified forms of its name, ordered a motion for an interlocutory injunction to restrain such modified user of the incorporated name to stand over to the trial of the action.—*Saunders v. The Sun Life Assurance Company of Canada*, L.R. [1894] 1 Ch. 537; 63 L.J. Ch. 247; 69 L.T. 755; 42 W.R. 304.
- (vi.) **C. A.**—*Register*—*Rectification*—*Calculated to Deceive*—*Person Aggrieved*—*Patents, &c., Act, 1883, s. 90*.—Decision of **Ch. D.** (see Vol. 19, p. 63, v.) affirmed.—*In re Trade Mark of La Société Anonyme des Verreries de l'Etoile*, 70 L.T. 295.

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- (i.) **Q. B. D.**—*Purchase by Local Authority—Basis of Valuation.*—In an arbitration under the London Street Tramways Act, 1870, to fix the price at which certain tramways were to be purchased by the London County Council, the referee refused to consider the profits of the tramways, or their rental value considered as let, or capable of being let, to a tenant. *Held*, that he was wrong, as the value should be assessed by ascertaining the rental value of the undertaking, and not by taking the cost of construction less depreciation.—*In re Arbitration between the London County Council and the London Street Tramways Co.*, 70 L.T. 97.

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- (ii.) **Ch. D.**—*Appointment of New—Personal Representatives of Surviving Trustee—Probate—Special Executors—Conveyancing Act, 1881, s. 31.*—P. appointed two persons trustees of his will. In 1881 one of the trustees died, and a sum of consols, part of the estate, became vested in the survivor. The survivor appointed A. and B. his general executors, and C. and D. executors for the purpose of the trust. A. and B. obtained a grant of probate, and by deed appointed C. and E. to be trustees of P.'s will. C. and D. obtained grants of probate for the purpose only of the trusts of P.'s will. *Held*, that the will of the surviving trustee was not an execution of the powers of the section above-mentioned; but that as A. and B. had obtained a general grant of probate of their testator's will they were his personal representatives, and that their appointment of C. and E. as trustees was valid. Ordered that D. should transfer his interest in the consols to C. and E.—*In re Parker's Trusts*, 70 L.T. 165.
- (iii.) **C. A. & Ch. D.**—*Breach of Trust—Fraudulent Trustee—Liability of Innocent Trustee.*—An action by the beneficiaries under a will against the executors and trustees, to compel them to make good a loss of part of the estate. One of the trustees who had been allowed by his co-trustees to convert certain registered railway bonds into bonds to bearer for the purpose of sale, had converted them to his own use. *Held*, that the trustees were doing their duty in selling the bonds; that the sale was a matter which might be properly entrusted to one of several trustees; and that the trustees had not been guilty of negligence in allowing one of their number to convert the bonds into bonds to bearer, and could not be made liable.—*Gasquoine v. Gasquoine*, L.R. [1894] 1 Ch. 470; 69 L.T. 822; 70 L.T. 196.
- (iv.) **Ch. D.**—*Breach of Trust—Investment—Deposit—Liability of Retiring Partner—Limitations.*—By will a testator empowered his trustees to invest moneys by depositing them with the firm of B., T. & Co. At the death of the testator a sum belonging to him was deposited with the said firm, which then consisted of W. and H. The trustees left it so deposited, and added other sums to it. H. died, and W. admitted new partners into the firm. W. afterwards retired, and the continuing partners by deed agreed to pay the debts of the firm, including that due to the testator's trustees. The continuing partners paid interest on the debt until the year 1891 in the name of the firm B., T. & Co. *Held*, that the trustees were liable in the event of loss, for not having got in the debt when the original firm was dissolved by the death of H., the authority being only to deposit money with the firm as constituted at the testator's death. *Held*, also, that the statute did not run in favour of W., the payment of interest by the continuing partners being a payment for or on behalf of him.—*Tucker v. Tucker*, 63 L.J. Ch. 223; 70 L.T. 127; 42 W.R. 266.

- (i.) **Ch. D.—Custody of Title Deeds and Securities.**—Where trust funds have been invested on a mortgage of a building estate, the development of which will involve frequent reference to the title-deeds, the trustees are justified in depositing them with their solicitor, instead of keeping them in their exclusive possession. *Seem*, that as a general rule, convertible securities, such as bonds payable to bearer, ought not to be left in the custody of a solicitor or agent.—*Field v. Field*, L.R. [1894] 1 Ch. 425; 69 L.T. 826; 42 W.R. 346.

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- (ii.) **Ch. D.—Conveyance of Land—Adjoining Road—Soil of Roadway—Presumption of Law—Rebuttal.**—The presumption of law that a conveyance of land adjoining a public road passes the soil of the road "*ad medium filum viae*," is rebutted by circumstances shewing that the road possesses a value to the conveying party apart from its user as a way, and by references in the conveyance shewing that the road is to be regarded as a parcel of land distinct from the parcels expressly conveyed.—*Pryor v. Petre*, 63 L.J. Ch. 132; 69 L.T. 795.
- (iii.) **Ch. D.—Leaseholds—Title—Sale by Executor—Presumption.**—A contract of sale of leaseholds stipulated that the title should commence with a lease of the 29th September, 1852. It stated that the lease was granted in consideration of the surrender of a term, and required the purchaser to assume that all necessary parties concurred in the surrender, and not to require an abstract or the production of the surrendered term, or of any title before the lease, and not to make any objection or requisition in connection therewith. The abstract shewed that the lease was granted to T. as executor of P. in consideration of a surrendered term, and that, by deed of 7th May, 1878, T., who did not appear on the deed as executor, and entered into ordinary covenants for title, assigned to the vendor's predecessor in title. *Held*, that an objection by the purchaser, that the lapse of twenty-six years between the lease and the sale by T. *prima facie* destroyed T.'s title to sell, could not be sustained. *Held*, also, that the frame of the deed of 1878 was insufficient to rebut the presumption that T. was selling as executor. *Held*, therefore, that the abstract disclosed a *prima facie* title according to the contract, and that the purchaser was not entitled to have an abstract of P.'s will, or to require proof of T.'s powers to sell and convey.—*In re Venn and Furse's Contract*, 70 L.T. 312.
- (iv.) **Ch. D.—Municipal Corporation—Building Scheme—Restrictive Covenants—Municipal Corporations Act, 1882, s. 109.**—A municipal corporation sold a plot of land, being part of its land which was subject to a building scheme. The conditions of sale provided that the purchasers should enter into restrictive covenants. The consent of the Treasury was obtained to the sale, but the memorial asking therefor did not state the conditions of sale. The conveyance contained restrictive covenants on the part of the purchaser, but no corresponding covenants on the part of the corporation. *Held*, that if the corporation had been a private owner it would have been bound by the scheme as regards its other land subject thereto, in spite of the absence of covenants; but that, as the consent of the Treasury to the scheme had not been obtained, the corporation were not bound by the scheme as regards its other land subject to the scheme but not included in the conveyance.—*Davis v. Corporation of Leicester*, 42 W.R. 362.
- (v.) **Ch. D.—Specific Performance—Contract by Letter—Negotiation.**—The Court will not enforce specific performance of a contract by letter in which the main heads of agreement are specified, but which provides

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- (i.) **Ch. D.—Assignment by Wife to Husband—Parol Evidence to shew Nature of Transaction—Statute of Frauds.**—A wife purchased leaseholds out of her separate estate. She soon after executed what purported to be a voluntary assignment to her husband, who mortgaged the premises. It was shewn by parol evidence that the assignment was made to enable him to borrow money, and that subject to this it was intended that the premises should remain the wife's property. The husband afterwards died. *Held*, that as the husband, if he had refused to reconvey the equity of redemption to his wife, could not have set up the Statute of Frauds, his creditors claiming under him were in no better position; and that therefore the equity of redemption belonged to the wife.—*Davis v. Whitehead*, 70 L.T. 314.

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- (ii.) **Ch. D.—Construction—Accumulation—*Thelluson Act*.**—A testator bequeathed several annuities to be paid out of the income of his personal estate, and directed that the surplus income should be accumulated till the death of the last surviving annuitant. He bequeathed the residue of his personal estate "in trust to pay and divide the same into the several charities hereinafter named, according to the amounts set after their respective names," and then followed the names of five charities, with the sum of £100 against each. There was a large surplus of income after providing for the annuities. In an action to administer the estate, it was decided that the charities were entitled to the whole of the surplus; but without any decision as to the future rights of any one to the accumulations, which were directed to be continued. Two of the annuitants having died, the next-of-kin petitioned for payment to them of the accumulations made since the expiration of 21 years from the testator's death. *Held*, that the charities were entitled to the whole of the accumulations.—*Harbin v. Masterman*, 69 L.T. 788.
- (iii.) **C. A.—Construction—Annuities—Clear of Deductions—Income Tax.**—Testator gave property on trust to pay annuities "clear of all deductions whatsoever except income tax." By codicil he directed that "every interest under my will shall be free of legacy duty and every other deduction." *Held*, that the annuities must be paid free of income tax.—*Williams v. Marson*, 70 L.T. 115; 42 W.R. 229.
- (iv.) **C. A.—Construction—Bequest of Arrears—"Outgoings."**—Devise of hereditaments to A., and bequest to A. of all arrears of the rents of such hereditaments which should be due at the testator's death, and all proportions to become due after his death of rents accruing due at his death, followed by a direction that "all outgoing of the said hereditaments properly chargeable against such arrears and proportions, and not discharged" in the testator's lifetime should be paid out of such arrears and proportions. *Held*, that the outgoing properly chargeable extended to all such expenditure upon the estate as must be deducted to ascertain the net rental, and included not only rates, taxes, and tithes, but also the agent's salary and commission, and sums paid or payable before the testator's death for repairs.—*Viscount Wolmer v. Forester*, L.R. [1894] 1 Ch. 164; 63 L.J. Ch. 115; 69 L.T. 807.

- (i.) **Ch. D.—Construction—Children—Illegitimate.**—A testator bequeathed his residuary estate in trust for his four children by name, including "A. J. H., the wife of J. H.," and declared that the share of A. J. H. should be in trust for A. J. H. for life, and "during any coverture" without power of anticipation, and after her death in trust for "the children or child of A. J. H." J. H. had married the testator's sister, and after her death, in the testator's lifetime, went through the ceremony of marriage with A. J., the testator's daughter, and had had a child by her. The testator knew these facts. After the testator's death J. H. had other children by A. J. H. *Held*, that the child born before the date of the will was entitled to the share of A. J. H.—*Harrison v. Higson*, L.R. [1894] 1 Ch. 561.
- (ii.) **Ch. D.—Construction—Devise of Land—Condition Requiring Residence—Infant.**—Devise of mansion-house and land to A. for life, remainder to the plaintiff in tail. There was a gift over in case any person who by virtue of the limitations in the will should come into possession of the estate should "refuse or neglect" to reside in and occupy the mansion-house for nine months in every year. At the time of A.'s death the plaintiff was an infant. *Held*, that the gift over could not take effect during his infancy.—*Partridge v. Partridge*, L.R. [1894] 1 Ch. 351; 63 L.J. Ch. 122; 70 L.T. 261.
- (iii.) **P. C.—Construction—Estate for Life or in Fee.**—A testator, by will made in 1821, after various bequests of realty and personality, proceeded, "I do give and bequeath unto my daughter A. fifty acres of land, being part of one hundred acres situated on the P. road, known as E. farm, and to my daughter E., fifty acres of land, being the remainder of the above-named hundred." Then followed the words "and whose names are in the schedule named, and property specifically mentioned to each of their respective names." The schedule contained the names of the various devisees, but not the particulars of the property devised. *Held*, that the words mentioning the schedule were words of reference, not of gift, and that the daughters only took life interests.—*Hill v. Brown*, 70 L.T. 175.
- (iv.) **C. A.—Construction—Falsa Demonstratio—Limitatio Vera.**—S. devised to his wife during widowhood, "my residence, called S. House, and premises thereto, as the same are now occupied by me." Some years before the date of the will he had let to his two sons for business purposes an office in the yard of S. House, and the stable and coach-house belonging to the house, except a room on the first floor of the coach-house to which the only access was through the house, and the sons were in occupation at his death. *Held*, that the reference to occupation could not be rejected as falsa demonstratio, and that the devise included the room over the coach-house, but not the office, stable, or coach-house.—*Seal v. Taylor*, L.R. [1894] 1 Ch. 816.
- (v.) **Ch. D.—Construction—Legacy—Demonstrative or Specific.**—A legacy of "800 pounds invested in 2½ consols" held specific, not demonstrative, on consideration of the context of the will.—*Pratt v. Pratt*, L.R. [1894] 1 Ch. 491.
- (vi.) **Ch. D.—Legacy—Residue—Not otherwise disposed of.**—A testator gave legacies, and then gave and devised all his real and personal estate not otherwise disposed of. *Held*, that the legacies were payable out of the mixed fund of realty and personality.—*Bawden v. Cresswell*, 42 W.R. 235.
- (vii.) **P. D.—Probate—Executor—Misdescription.—Parol Evidence—Declarations of Testator.**—A testator appointed as executor "Robert Taylor, of W., in the parish of B., bootmaker." There was no Robert Taylor living at W. in the parish of B., but there was a J. A. Taylor, a bootmaker, living there, and there was a Robert B. Taylor, also a boot-

maker, living at H., in the same parish. *Held*, that evidence might be given to shew that the testator had little acquaintance with R. B. Taylor, but was a friend of J. A. Taylor; and probate was granted to J. A. Taylor. *Semble*, that evidence of declarations of the testator was not admissible.—*In the goods of Chappell*, L.R. [1894] P. 98; 70 L.T. 245.

- (i.) **C. A.**—*Probate—Onus Probandi*.—Whenever circumstances exist which excite the suspicion of the Court, it is for those who propound a will to remove that suspicion, and to shew affirmatively that the testator knew and approved of the contents of the document; and it is only when this is done that the onus falls on the opponents to prove their case against the will.—*Tyrrell v. Painton*, 42 W.R. 343.
- (ii.) **P. D.**—*Probate—Signature on First Page of Will*.—Where a will was on two pages of a sheet of paper, the first page containing the disposing parts of the will, and the signature and attestations being at the bottom of the first page, *held*, that probate should be granted of the first page only.—*In the goods of Anstee*, 63 L.J. P. 61.
- (iii.) **P. D.**—*Probate—Testamentary Papers—Incorporation*.—The testator executed a document in the presence of two attesting witnesses. The document appointed no executors and contained no bequests, but referred to "the enclosed papers, numbered 1, 2, 3, 4, 5, and 6" as containing his testamentary wishes, and recited that they had been signed by himself in the presence of the witnesses, who, however, said that they had not seen any of them. They said that the testator asked them to witness his signature to his will; at the same time pointing to a drawer in the table and saying, "The will is in this drawer." The papers bore various dates antecedent to the attested document. *Held*, that as the documents were not clearly identified with the description given of them in the attested papers, they could not be incorporated therewith; and that as the attested paper would be inoperative without them, probate of all the documents must be refused.—*In the goods of Garnett*, L.R. [1894] P. 90; 70 L.T. 87.
- (iv.) **P. D.**—*English Will—Russian Will of Real Estate—Deed of Covenants by Russian Devisees—Documents Admissible to Probate*.—A testator domiciled in England executed a will and codicils dealing with his English property and Russian personal property, a will dealing with real property in Russia, and a deed of covenants by the devisees of the Russian real property, by which they covenanted to sell the same and to hand over the proceeds to the English executors. This deed was executed before the last codicil, which recited that it was intended that it should be executed. *Held*, that the Russian will and the deed of covenants ought not to be included in the English probate.—*In the goods of Tamplin*, L.R. [1894] P. 89; 42 W.R. 287.

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Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR MAY, JUNE, AND JULY, 1894.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration : -

- (i.) **Ch. D.—Business—Indemnity—Creditors.**—Executors carried on the business of a testator in pursuance of directions in the will, and incurred trade debts. The trade creditors claimed that they were entitled, through the executors' right of indemnity, to payment out of the estate. The executors had made default in rendering accounts, but not in paying money. *Held*, that the right of indemnity was not lost, and that the creditors were entitled to prove against the estate. —*Kidd v. Kidd*, 70 L.T. 648.
- (ii.) **P. D.—Person of Unsound Mind but not lawfully detained as a Lunatic**—*Lunacy Act*, 1890, s. 116, sub-s. 1 (d).—The sole next-of-kin of the intestate was a person "not lawfully detained as a lunatic, and not found a lunatic by inquisition, but, through mental infirmity arising from age, incapable of managing her affairs." Her estate was administered by a person appointed to act with the powers of a committee. The Court made a grant of administration to such person for the use and benefit of the next-of-kin.—*In the goods of Leese*, L.R. [1894] P. 160.

Adulteration :—

- (iii.) **Q. B. D.—Summons—Amendment.**—A consignor of milk was summoned under sect. 6 of the Sale of Food and Drugs Act, 1875, and the evidence disclosed an offence under sect. 3 of the Amendment Act, 1879. *Held*, that the variance was curable under sect. 1 of the Summary Jurisdiction Act, 1848, and that he was rightly convicted.—*Hiatt v. Ward*, 70 L.T. 374.

Animals :—

- (i.) **Q. B. D.**—*Cruelty to—Domestic Animals—Lions—Cruelty to Animals Acts, 1849, ss. 2, 29; 1854, s. 3.*—Lions kept in a cage for exhibition are not "domestic animals," and an indictment for cruelly treating them will not lie.—*Harper v. Marcks*, L.R. [1894] 2 Q.B. 319.

Arbitration :—

- (ii.) **Q. B. D.**—*Costs.*—An order of reference referred the whole cause to a special referee for trial. The referee awarded that nothing was due to the plaintiff, and directed and awarded that the defendants should recover the costs of the action and award. *Held*, that the costs of the reference were included in the costs of the action, and that the defendants were entitled to recover them.—*Patten v. West of England Iron, Timber, and Charcoal Co.*, L.R. [1894] 2 Q.B. 159; 42 W.R. 522.
- (iii.) **C. A.**—*Staying Proceedings—"Step in Proceedings"—Arbitration Act, 1889, s. 4.*—Decision of Ch. D. (*see* Vol. 19, p. 32, v.) affirmed.—*Ives and Barker v. Willans*, 70 L.T. 674; 42 W.R. 483.

Bailment :—

- (iv.) **Q. B. D.**—*Negligence—Licensee—Master and Servant.*—A committee hired the defendants' hall for a concert. The memorandum of hiring did not mention a rehearsal, but one took place. The plaintiff, without request or notice to the hall-keeper, left his violin in a room attached to the hall. The hall-keeper was the defendants' servant, and in order to light the gas in the course of his duty, he moved the violin and broke it. *Held*, that there had been no such negligence on his part as to make the defendants liable.—*Newcith v. Over Darwen Co-operative Society*, 63 L.J. Q.B. 290; 70 L.T. 374.

Banker :—

- (v.) **Q. B. D.**—*Crossed Cheque—Forged Indorsement—Protection to Banker—Bills of Exchange Act, 1882, s. 82.*—The word "customer" in the section above mentioned, involves use and habit; and a banker who collects a cheque for a stranger cannot claim the protection of the section if it turns out that the stranger has no title to the cheque.—*Mathews v. Brown*, 63 L.J. Q.B. 494.

Bankruptcy :—

- (vi.) **Q. B. D.**—*Act of—Date—Failure to Comply with Notice—Amendment—Bankruptcy Act, 1883, s. 4 (1) (g).*—A bankruptcy petition stated that the debtor had failed to comply with a bankruptcy notice served on a day named. *Held*, that this did not sufficiently state the date of the act of bankruptcy; and that it ought to have been stated that the debtor had failed before a day, eight days later than the day on which the notice was stated to have been served, to comply with the notice. *Held*, that the defect was not a ground for setting aside the receiving order, but ought to have been amended at the hearing, and could be amended at the hearing of an appeal from the receiving order.—*E. p. Dunhill*; *in re Dunhill*, L.R. [1894] 2 Q.B. 234.
- (vii.) **Ch. D.**—*Annulment—Private Bargain by Creditor.*—L. assigned his proof in the bankruptcy of M. to trustees for £2,000, having made a private bargain with M. that, after the bankruptcy was annulled, M. should pay him £6,000. *Held*, that the £6,000 could not be recovered, and L.'s claim for that sum in the administration of M.'s estate was disallowed.—*McDermott v. Boyd*; *e. p. Levita*, 42 W.R. 474.

- (i.) **Q. B. D.**—*Appeal—Appellant who has not appeared in the Court below—Bankruptcy Acts, 1883, s. 104 (2); 1890, s. 3 (6).*—A creditor who has tendered a proof which is unrejected is a "person aggrieved," and entitled to be heard on appeal against an order of the Court, although he did not appear in the Court when the order was made, nor tender a proof till after the making of the order.—*E. p. Stephenson; in re Langtry, 70 L.T. 736; 42 W.R. 496.*
- (ii.) **Q. B. D.**—*Appointment of Trustee—Two Estates with Conflicting Interests.*—As a general rule, it is not a good objection against the appointment of the same person as trustee of two estates that conflicting interests will arise between them, nor yet that such person is a creditor for a larger amount against one estate than against the other.—*E. p. Board of Trade; in re Lamb, 70 L.T. 694; 42 W.R. 544.*
- (iii.) **Q. B. D.**—*Costs of Solicitor—Criminal Defence—Verbal Agreement.*—The debtors paid a sum of money to their solicitor, and verbally agreed that it was to be employed in their defence against a criminal charge. A receiving order was made before they were committed for trial. *Held*, that the solicitors must repay to the trustee the sum received, less their costs for services rendered up to the date of the petition.—*E. p. Cooper; in re Beyts and Craig, 70 L.T. 561; 42 W.R. 432.*
- (iv.) **C. A.**—*Examination of Witness—Transcript—File.*—The examination of a witness under sect. 27 of the Bankruptcy Act, 1883, is a proceeding of the Court, and the transcript of the shorthand writer's notes must be placed upon the file of the proceedings.—*E. p. Beall; in re Beall, L.R. [1894] 2 Q.B. 135; 63 L.J. Q.B. 425; 70 L.T. 643.*
- (v.) **Q. B. D.**—*Lease—Covenant not to Assign—Assignment by Trustee—Liability for Rent.*—A lease contained a covenant against assignment. The lessee became bankrupt, and the trustee assigned the lease. The lessor claimed as against the trustee the rent due after the assignment. *Held*, that the trustee's liability was based on privity of estate, and ceased on the assignment.—*In re Johnson; e. p. Blackett, 70 L.T. 881.*
- (vi.) **Q. B. D.**—*Officer of Friendly Society—Money in Hand—Preferential Claim.*—Where the secretary of a friendly society has been wrongfully allowed to keep in his hands moneys belonging to the society, instead of handing them over at once to the treasurer, the preferential claim of the society in the bankruptcy of the secretary is not lost.—*E. p. Trustees of Star of the West Lodge of Oddfellows; in re Welch, 70 L.T. 691.*
- (vii.) **Ch. D.**—*Partnership—Joint Liability—No Joint Estate—Right of Proof—Bankruptcy Acts, 1883, s. 40 (3).*—When a partnership firm is bankrupt and there is no joint estate, joint creditors may prove against the separate estates in competition with separate creditors.—*Cooper v. Adams, 42 W.R. 551.*
- (viii.) **Q. B. D.**—*Partnership—Right of Trustee of Bankrupt Partner against Execution Creditors of Firm—Bankruptcy Acts, 1883, ss. 45, 46 (3); 1890, s. 11 (1) (2).*—Where execution is levied by seizure and sale against the goods of a firm for a partnership debt, and one of the partners afterwards becomes bankrupt, the trustee of the bankrupt partner has no claim to the proceeds of sale.—*Dibb v. Brooke, L.R. [1894] 2 Q.B. 338; 42 W.R. 495.*
- (ix.) **Q. B. D.**—*Proof—Oral Evidence.*—Upon the hearing of a petition oral evidence may be given to shew that the debt set forth in the petition is still owing at the date of the hearing.—*E. p. Smith; in re Stables, 42 W.R. 448.*

- (i.) **C. A.**—*Public Examination—Order to File Accounts of Business.*—A bankrupt, upon his public examination, denied that he had carried on a certain business as his own. The registrar considered that the business was his, and ordered him to file accounts. *Held*, that the registrar had jurisdiction to determine the question of title for the purpose of making such order.—*E. p. Cronmire; in re Cronmire*, L.R. [1894] 2 Q.B. 246; 70 L.T. 610; 42 W.R. 417.
- (ii.) **C. A.**—*Receiving Order—Refusal—Second Application—Res Judicata.*—The question of the validity of the petitioning creditor's debt as a good debt in bankruptcy is not made *res judicata* by the refusal of the registrar of a county court to grant a receiving order, on the ground that he was not satisfied that there was a good debt; his jurisdiction being confined to a discretion to grant or refuse a receiving order, and not extending to the decision of the question of whether there was a good debt.—*E. p. Vitoria; in re Vitoria* (No. 2), 42 W.R. 529.
- (iii.) **Q. B. D.**—*Sale by Mortgagee of Bankrupt's Reversion—Rights of Trustee.*—The bankrupt, during bankruptcy, mortgaged his reversion to property. The mortgagees put up the reversion for sale, reserving the rights of the trustee. The trustee obtained an injunction against the sale from the county court. *Held*, that there was no jurisdiction to restrain the sale, as there was no slander of the trustee's title, nor any interference with the administration of the estate. *Semle*, that the result would have been the same even if the trustee's rights had not been reserved.—*E. p. General Public Works and Assets Co.; in re Evelyn*, L.R. [1894] 2 Q.B. 302; 70 L.T. 692; 42 W.R. 512.
- (iv.) **Q. B. D.**—*Subpoena—Refusal to Obey—Insufficient Tender for Expenses—Bankruptcy Act, 1883, s. 27.*—A person subpoenaed to attend in Court, and refusing to obey, cannot be committed for contempt until a reasonable sum has been tendered to cover the cost of coming to the Court and expenses.—*E. p. Hastie; in re Batson*, 70 L.T. 382.
- (v.) **C. A.**—*Secured Creditor—Promissory Note—Guarantee—Bankruptcy Act, 1883, s. 168.*—The debtors lent a sum of money, receiving from the borrower a promissory note, together with a guarantee, the guarantors undertaking to pay to the debtors "or the holders of the promissory note for the time being" the amount thereof if not paid at maturity. The debtors indorsed the note to their bankers, the appellants, who gave them credit for the full amount thereof. The debtors became bankrupt, and the note was dishonoured at maturity. The appellants sought to prove as unsecured creditors for the full amount due to them by the debtors. *Held*, that all the beneficial interest in the guarantee had passed to the appellants, and that they were not "persons holding a mortgage, charge or lien on the property of the debtors or any part thereof," and that they were therefore not secured creditors, and were not liable to deduct the value of the guarantee from their proof.—*E. p. Cocks, Biddulph and Co.; in re Hallett*, L.R. [1894] 2 Q.B. 256.
- (vi.) **C. A.**—*Undischarged Bankrupt—After-acquired Property—Trading—Second Bankruptcy—Bankruptcy Act, 1883, ss. 44, 54.*—An undischarged bankrupt, without the knowledge of the trustee or creditors, carried on business, and acquired property and incurred liabilities. He assigned all his property for the benefit of his creditors, and was again adjudicated bankrupt. *Held*, that the trustee in the first bankruptcy was entitled to all property acquired by the bankrupt, without any obligation to satisfy any of the liabilities incurred by the bankrupt since the first bankruptcy.—*E. p. Beardmore; in re Clark*, 70 L.T. 751.

Bill of Exchange :—

- (i.) **Q. B. D.**—*Company—Directors—Liability—Addition—Companies Act, 1862, ss. 41, 42.*—The defendants, two directors and the secretary of a company called the B. Syndicate, accepted a bill of exchange on behalf of the company, giving its name as the O. and B. Syndicate. *Held*, that the name of the company was not "mentioned," and that the defendants were personally liable on the bill.—*Nassau Steam Press v. Tyler*, 70 L.T. 376.

Bill of Sale :—

- (ii.) **C. A.**—*Sale of Goods—Receipt—Registration—Husband and Wife.*—A wife having separate estate agreed to purchase from her husband some furniture and other chattels. A receipt for the purchase money was signed by the husband, in which he acknowledged that the chattels were "now absolutely her property." The chattels remained in the house in which the husband and wife lived, and some of them were taken possession of by a judgment creditor of the husband. *Held*, that the goods did not pass by virtue of the receipt, but by the prior bargain, and that consequently the receipt did not require registration as a bill of sale, and that the wife was entitled to the goods. *Held*, also, that the wife had sufficient possession of the goods to take the case out of the Act.—*Ramsay v. Margrett*, L.R. [1894] 2 Q.B. 18.

Building Society :—

- (iii.) **Ch. D.**—*Liabilities of Members—Costs.*—In considering whether the members, advanced and unadvanced, of a building society, registered under the Act of 1836, can be called on to contribute towards the discharge of its ordinary debts beyond the amounts of subscriptions or instalments and fines unpaid on their mortgages and shares, the doctrine of principal and agent applies as between members and directors. Therefore when the debts were properly incurred and the assets are insufficient, members, advanced and unadvanced, are liable, and must be placed on the list of contributories. A rule, giving power to bind the members personally for borrowed money would be *ultra vires* so far as it purported to go beyond binding them for the necessary purposes of the society. Therefore members would not be personally liable in respect of loans from depositors. But such members cannot, in answer to a claim to contribute to ordinary debts, set up as an answer that there were sufficient assets to pay the ordinary debts, and that the assets became insufficient only through the repayment of borrowed moneys. In winding up such a society, the costs of realisation ought to come out of the assets, and the costs of winding-up ought to be paid by the members, advanced and unadvanced.—*In re West London and General Permanent Benefit Building Society*, L.R. [1894] 2 Ch. 352; 63 L.J. Ch. 506; 42 W.R. 535.

Carrier :—

- (iv.) **H. L.**—*Passenger—Conditions on Ticket.*—Conditions printed on a passenger's ticket are not binding on him unless he has had notice of them. Whether he has had notice or has had his attention drawn to the conditions is a question for the jury.—*Richardson, Spence, & Co. v. Rowntree*, L.R. [1894] A.C. 217; 63 L.J. Q.B. 283.

Charity :—

- (v.) **Ch. D.**—*Compulsory Sale of Land—Voluntary Subscriptions—Endowment—Charity Commissioners.*—Land had been bought by a charity out of funds derived from voluntary contributions. The Act incorporating

the charity empowered it to purchase land but not to sell it. The special Act of a railway company conferred on the charity a power of sale, and the land was taken by the company, the purchase-money being fixed by the Act at £40,000. The Charity Commissioners intervened, and £5,000, part of the purchase-money, was paid into Court. *Held*, that if a fund once consisted of voluntary contributions, it retained that character notwithstanding any changes of investment, and being available for the general purposes of the charity was taken out of the Charitable Trusts Act, 1853, by the exception contained in sect. 62 of the Act, and that the consent of the Charity Commissioners was not required, and that the charity was entitled to have the £5,000 paid out to them as being absolutely entitled thereto.—*In re Clergy Orphan Corporation*, 70 L.T. 649.

- (i.) **P. C.**—*Welsh Intermediate Education Act, 1889—Endowed Schools Act, 1869, s. 39—Scheme of Charity Commissioners—Appeal Against—Modern Endowment—Religious Education.*—In an appeal against a scheme under the first named Act, the policy of the scheme cannot be considered. Where there is no direction in the original instrument of foundation as to religious education, nor any regulations prescribed by or under the authority of the founder in his lifetime or within fifty years of his death, the scheme need not provide for religious instruction according to the Established Church. Such regulations cannot be presumed from any practice which may have obtained for many years. Sect. 13 of the Act of 1869 does not apply to rights of patronage which are not, at the date of the Act, exercised by a member of the governing body, or possessed in consequence of his gift or donation. A modern endowment is one which has been given since 1869. Such endowment applied in fitting up a crypt, being part of the old endowment, as a chapel, is so mixed therewith that it must be deemed to be part thereof.—*In re Swansea Free Grammar School*, L.R. [1894] A.C. 252; 70 L.T. 738.

Cheque:—

- (ii.) **Q. B. D.**—*Signature by Procuration—Limited Authority—Bills of Exchange Act, 1882, s. 25.*—The defendants' manager who had authority to draw cheques on their banking account, but not to overdraw or to borrow, obtained money from the plaintiff for a cheque signed by him by procuration, alleging that he needed cash to pay wages. He paid the money into the defendants' banking account, which was overdrawn on account of his defalcations, and subsequently drew it out and paid it away in wages. *Held*, that the plaintiff was precluded from bringing an action on the cheque, but was entitled to recover the amount as money had and received.—*Reid v. Rigby & Co.*, 68 L.J. Q.B. 451.

Churchwardens:—

- (iii.) **Q. B. D.**—*Church Rate—Full Annual Value.*—Where churchwardens were "directed and required" by a special Act to make and levy a rate "at any meeting holden in vestry" for certain church purposes, such rate to be assessed on the "full annual value" of houses: *Held*, that there was a statutory duty to make the rate, and that they were not required to take the opinion of the vestry thereon, but that the assessment must be on the net annual value, and that the word "full" was not equivalent to "gross."—*Rose v. Watson*, L.R. [1894] 2 Q.B. 90; 63 L.J. M.C. 108; 42 W.R. 523.

Colonial Law:—

- (iv.) **P. C.**—*Canada—Powers of Local Legislature.*—*Held*, that the provisions of sect. 9 of the Ontario "Act respecting assignments

and preferences by insolvent persons" (revised statutes of Ontario, c. 124) which relate to assignments purely voluntary, and postpone thereto judgments and executions not completely executed by payment, are merely ancillary to bankruptcy law, and as such are within the competency of the provincial legislature so long as they are not in conflict with any existing bankruptcy legislation of the Dominion Parliament.—*Attorney-General of Ontario v. Attorney-General for the Dominion of Canada*, L.R. [1894] A.C. 189; 70 L.T. 538.

- (i.) **P. C.**—*Ceylon—Special Leave to Appeal*.—Special leave given to appeal against a decree of the Supreme Court which reversed a decree of the district court, and dismissed a suit for divorce, the Supreme Court having refused leave to appeal, regarding the suit as one for less than the appealable amount.—*Le Meunier v. Le Meunier*, L.R. [1894] A.C. 283.
- (ii.) **P. C.**—*New South Wales—Registered Mortgage—Notice*.—Where the respondent had purchased at public auction eight lots of an estate and subsequently to the contract the vendor mortgaged the whole of the estate by registered deeds to the appellant, who knew at the time of the advance that certain unspecified parts of the estate had been sold: *Held*, that the appellant gained no priority from registration, but took subject to the respondent's purchase.—*Sydney and Suburban Mutual Building and Land Investment Association v. Lyons*, L.R. [1894] A.C. 260.
- (iii.) **P. C.**—*New South Wales—Application to bring Land under 26 Vict., No. 9—Caveat—Lapse—Waiver*.—An applicant to bring land under the above-mentioned Act filed his case more than three months after a caveat had been lodged, and thereafter obtained an order that the caveator should file his case, which he did. *Held*, that the applicant had waived his right to have the caveat set aside as lapsed.—*Wilson v. McIntosh*, L.R. [1894] A.C. 129; 70 L.T. 536.
- (iv.) **P. C.**—*Waste Lands—Right to Select—Contract*.—By contract between the appellant company and the local government the former was entitled, in part consideration of constructing a railway, to select, and call for grants of, land within a prescribed area. *Held*, that the appellant company was entitled to select from all lands within the area which at the date of the contract the Government was able to convey in fee simple, including lands which had been proclaimed as town sites, but which had not by such proclamation been devoted to public uses or otherwise withdrawn from the Government's power of alienation.—*West Australian Land Co. v. Forrest*, L.R. [1894] A.C. 176.

Company:—

- (v.) **Ch. D.**—*Debentures*.—Where debentures contain covenants to pay the principal at a future date and also interest, and there are no provisions as to the principal becoming due on default or on a winding-up, the fact that there is default in payment of interest and that a winding-up order is made, entitles the holders to a judgment for their protection before the date at which the principal is due, but does not entitle them to immediate payment of the principal money.—*Wallace v. Universal Automatic Weighing Machine Co.*, 70 L.T. 497; 42 W.R. 428.
- (vi.) **Ch. D.**—*Debenture—Right to Foreclosure*.—A debenture of a limited company, in the form of a floating security charging all the property of the company, including its uncalled capital, entitles the registered holder, in the event of the debenture becoming immediately payable in consequence of a winding-up, to the ordinary remedy of foreclosure against the uncalled capital as well as the other property.—*Sadler v. Worley*, L.R. [1894] 2 Ch. 170; 70 L.T. 494; 42 W.R. 476.

- (i.) **Ch. D.—Debenture-holder's Action—Preservation of Property—Power to Receiver to Borrow.**—In a debenture-holder's action the Court will, in a case of emergency, and in order to preserve the company's property, empower the receiver to borrow money as a first charge on the undertaking in priority to the debentures.—*Greenwood v. Algeiras Railway Co.*, L.R. [1894] 2 Ch. 205.
- (ii.) **C. A.—Director—Qualification—Estoppel.**—Decision of Ch. D. (see Vol. 19, p. 78, ii.) affirmed.—*E. p. Cammell; in re Printing, &c., Co. of the Agence Havas*, 70 L.T. 705.
- (iii.) **C. A.—Director—Qualification Shares—Implied Contract to Take.**—Decision of Ch. D. (see Vol. 19, p. 78, i.) affirmed.—*In re Hercynia Copper Co.*, 70 L.T. 709.
- (iv.) **C. A. & Ch. D.—Dividends—Depreciation of Capital.**—A company was formed to raise and invest money, and to apply the dividends and income in accordance with the articles. The articles provided for changes of investment, and gave power to form a reserve fund. The receipts from the dividends on the investments exceeded the expenses, but the market value of the securities held by the company shewed a depreciation of the capital. *Held*, that the surplus of income over expenditure might properly be distributed in dividends in spite of the depreciation of the capital.—*Verner v. General and Commercial Investment Trust*.—L.R. [1894] 2 Ch. 239; 63 L.J. Ch. 456; 70 L.T. 516.
- (v.) **Ch. D.—Reduction of Capital.**—The Court refused to sanction a proposed reduction of capital where it appeared that the company had ceased to carry on business for five years, and that the real object was to enable the whole available assets to be distributed amongst the shareholders.—*In re Wallasey Brick and Land Co.*, 63 L.J. Ch. 415.
- (vi.) **H. L.—Reduction of Capital—Discontinuance of Part of Business—Cancellation of Part of a Class of Shares—Companies Acts, 1867, s. 9; 1877, ss. 3, 4.**—The Court can sanction a scheme for the reduction of capital which involves the cancellation of a certain number of shares in consideration of the transfer to the holders of part of the company's property. The reduction need not affect all the holders of such class of shares. The words "any capital which may be excess of the wants of the company" only mean that the power shall extend to such capital. The power of the Court extends to every possible mode of reduction, and capital may be legitimately reduced by buying out some of the shareholders. A company carried on part of its business in the United States. *Held*, that a scheme should be approved for the reduction of capital by cancelling the shares held in America, in consideration of the transfer to the holders of the American property of the company, there being only one dissentient shareholder.—*British and American Trustee and Finance Corporation v. Couper*, 62 L.J. Ch. 425.
- (vii.) **Q. B. D.—Winding-up—Industrial Society.**—The enactments from time to time in force for the winding-up of companies in the Chancery Division apply to the case of the winding-up of a registered Industrial Society, which was pending in the county court at the time of the passing of the Industrial and Provident Societies Act, 1893, and which has not been transferred to the High Court under the provisions of sect. 59 of that Act.—*In re The Ferndale Industrial Co-operative Society*, L.R. [1894] 1 Q.B. 828; 70 L.T. 448; 42 W.R. 430.
- (viii.) **Ch. D.—Winding-up—Jurisdiction—Stannaries—Transfer—Companies Acts, 1862, ss. 81, 141; 1890, s. 1, sub-s. 4, s. 3, sub-s. 1, s. 32, sub-ss. 1, 2.**—The High Court has power to transfer or retain proceedings in voluntary as well as in compulsory liquidations. Where a company is formed for working mines within the stannaries and elsewhere, the

winding-up jurisdiction is in the Stannaries Court, until it is proved that the company has been working mines elsewhere. This applies to both voluntary and compulsory liquidations. The fact that an application in the voluntary winding-up of a company has been made in the Stannaries Court is a ground for transferring to that Court another application in the same winding-up.—*In re New Terras Tin Mining Co.*, L.R. [1894] 2 Ch. 344; 63 L.J. Ch. 397; 70 L.T. 625; 42 W.R. 504.

- (i.) **Ch. D.**—*Winding-up—Report of Official Receiver—Fraud—Companies Act, 1890, s. 8.*—In order to obtain an order for public examination under the section above-mentioned, the official receiver should, in his further report, state matters of information and belief, and should pledge himself that such matters in his opinion constitute a *prima facie* case of fraud by some person, not specifying which person, in the promotion or formation of the company, or in relation to the company since the formation thereof. Whether or not the expression of such opinion is a condition precedent to the making of such an order, it is convenient in practice that it should be so expressed.—*In re General Phosphate Corporation*; *in re Northern Transvaal Gold Mining Co.*; *in re Delhi Steamship Co.*, 63 L.J. Ch. 513; 70 L.T. 626.
- (ii.) **Ch. D.**—*Winding-up Petition—Abuse of Process—Jurisdiction to Restrain.*—Where a winding-up petition is presented for the purpose of putting pressure on a company, the Court has jurisdiction to prevent such an abuse of process, and will do so, without requiring an action to be commenced, by restraining the advertisement of the petition, and staying all proceedings upon it.—*In re A Company*, L.R. [1894] 2 Ch. 349.

See Bill of Exchange, p. 117, i.

Contract:—

- (iii.) **P. C.**—*Condition Precedent—Repudiation.*—Bankers sold to A., exchange contracts, i.e., undertook to pay in exchange for silver sterling money or its equivalent within certain limits of time at a specified rate, but stipulated that the goods in payment for which the sterling money was required should be financed by them. *Held*, in an action on the exchange contracts, that financing the goods was a condition precedent. But that both parties were under a mutual obligation to settle reasonable terms of financing, and that as the bankers repudiated such obligation A. was entitled to judgment. The evidence as to the parties' compliance with the condition precedent being in London, their Lordships directed it to be taken on commission instead of remitting the case to the Court below in Shanghai.—*Bank of China, Japan, and the Straits v. American Trading Co.*, L.R. [1894] A.C. 266.
- (iv.) **H. L.**—*Conflict of Laws—Locus Solutionis.*—A contract between English and Scotch firms, signed in London, but to be performed in Scotland, provided for the reference of any disputes to "two members of the London Corn Exchange, or their umpire, in the usual way." The Scotch firm sued on the contract in Scotland, and the Court decided that the arbitration clause was bad by the law of Scotland, the *locus solutionis*. *Held*, that the intention of the parties was that the contract, so far at least as concerned the arbitration clause, should be governed by English law, and that the clause was good.—*Hamlyn and Co. v. Talisker Distillery Co.*, L.R. [1894] A.C. 202.

Conversion:—

- (v.) **Q. B. D.**—*Crossed Cheque—Banker.*—The payee of a crossed cheque indorsed it specially to the plaintiffs and posted it to them. A stranger got possession of the cheque, obliterated the indorsement to

the plaintiffs, substituted one to himself, and presented it at the defendants' bank to collect for him. The defendants collected the cheque and handed him the proceeds. *Held*, that they were liable for the conversion of the cheque.—*Kleinwort, Sons & Co. v. Comptoir National D'Escompte de Paris*, L.R. [1894] 2 Q.B. 157.

Copyright:—

- (i.) **Ch. D.**—*Infringement—Picture—Copy of Reproduction*.—A copy of a picture is an infringement of the copyright in that picture even if the copy is not made directly from the picture, but is taken from a reproduction which is not itself an infringement.—*Hanfstaengl v. Empire Palace*; *Hanfstaengl v. Newnes*, 63 L.J. Ch. 452.
- (ii.) **C. A.**—*Picture*—25 & 26 Vict., c. 68, ss. 6, 10—49 & 50 Vict., c. 33.—The representation of a picture by means of tableaux vivants is not an infringement of the copyright in such picture.—*Hanfstaengl v. Empire Palace*, L.R. [1894] 2 Ch. 1; 63 L.J. Ch. 417; 70 L.T. 459; 42 W.R. 454.

County Court:—

- (iii.) **Q. B. D.**—*Costs—Action Remitted—County Courts Act, 1888, s. 65*.—An action was brought in the High Court for £104. The defendant paid £90, and the action was remitted to a county court. The defendant paid the balance of the claim before the return day. *Held*, that the plaintiff was entitled to costs under Scale C.—*Keeble v. Bennett*, L.R. [1894] 2 Q.B. 329; 42 W.R. 539.
- (iv.) **Q. B. D.**—*Practice—Judge's Note—County Courts Act, 1888, ss. 120, 121*.—A county court judge is only bound to take a note when a question of law is raised, and he is asked to take a note of that question; and it is then his duty to take a note of that question of law, and of the evidence relating thereto, and of his decision thereon, and of his decision of the action or matter. If there be more questions of law than one, the request to take a note must be made in respect of each.—*Reg. v. Kerr*, 70 L.T. 595.
- (v.) **Q. B. D.**—*Remittal to—Unliquidated Damages—Indorsement on W'rit*.—There is no power under sect. 65 of the County Courts Act, 1888, to remit an action for unliquidated damages to the county court, even where the writ is indorsed with a claim for a liquidated sum.—*Bassett v. Tong*, L.R. [1894] 2 Q.B. 332.

Criminal Law:—

- (vi.) **C. C. R.**—*Indictment—False Pretences*.—An indictment which does not aver to whom a false pretence was made, nor from whom money was attempted to be obtained is bad.—*Reg. v. Sowerby*, L.R. [1894] 2 Q.B. 178; 63 L.J. M.C. 186.
- (vii.) **Q. B. D.**—*Misdemeanour—New Trial—Obstruction of Highway—Evidence*.—Where the defendant had been found guilty on an indictment in the Queen's Bench Division of obstructing a highway, a new trial may be granted on the grounds of misdirection, wrongful reception of evidence, and verdict against evidence. The map attached to an old enclosure award shewing an ancient highway as existing at the time of the award, is not admissible at the trial of such an indictment as evidence of reputation to prove the boundaries of the highway, where the defendant's property lying adjacent to the highway was not subject to the jurisdiction of the enclosure commissioners.—*Reg. v. Berger*, L.R. [1894] 1 Q.B. 828; 42 W.R. 541.

- (i.) **C. C. R.**—*Obtaining Credit—Undischarged Bankrupt.*—When an undischarged bankrupt is indicted for obtaining credit contrary to sect. 73 of the Bankruptcy Act, 1883, it is no defence to shew that the credit was obtained without fraudulent intent, and evidence for that purpose is inadmissible.—*Reg. v. Dyson*, L.R. [1894] 2 Q.B. 176; 63 L.J. M.C. 124; 42 W.R. 526.
- (ii.) **C. C. R.**—*Previous Conviction—Certificate—Coinage Act*, 1861, ss. 9, 12.—A certificate of a previous conviction for misdemeanour under the Coinage Act, need not set out that there was judgment and sentence, as well as verdict. A prisoner so convicted, and released on recognizance to come up for judgment when called, may on a second offence be indicted for felony, and properly convicted, upon proof of a certificate of the former conviction and release.—*Reg. v. Blaby*, L.R. [1894] 2 Q.B. 170; 63 L.J. M.C. 133; 42 W.R. 511.

Ecclesiastical Law :—

- (iii.) **Consistory Court of St. Alban's.**—*Faculty—Chancel Screen—Gates.*—Gates in a chancel screen have been declared to be objectionable, as affecting a separation between the nave and the chancel which ought not to be sanctioned, and the Court refused a faculty for a screen with gates; though it was stated that they would be useful as a protection to the ornaments in the chancel when the church was thrown open for private prayer.—*Rector, &c., of Romford v. All Persons Having Interest, &c.*, L.R. [1894] P. 220.

Estoppel.—*See Highway*, p. 124, iv.

Executors :—

- (iv.) **Ch. D.**—*Land—Power of Sale—Charge of Legacy.*—A charge of a legacy on lands devised beneficially in fee or in tail does not give the executor a power of sale.—*Bennett v. Rebbeck*, 42 W.R. 473.

Fishery :—

- (v.) **Q. B. D.**—*Freshwater—Bailiff—Authority to Prosecute.*—Under sect. 13 of the Fisheries Act, 1891, a water bailiff may prosecute for an offence against the Fisheries Acts without the authority of the board of conservators of the district.—*Pollock v. Moses*, 63 L.J. M.C. 116; 70 L.T. 878.

Friendly Society :—

- (vi.) **Q. B. D.**—*Arbitration—Disputes—Friendly Societies Act*, 1875, s. 22.—*Held*, that a claim raising the question whether the second wife of an enrolled member of a friendly society was entitled to enrolment, and a claim for an injunction arising upon a suggestion that the society was about to dispose of its funds otherwise than for the benefit of its members, were both disputes within a rule of the society providing for arbitration in disputes between the society and its members.—*Stone v. Liverpool Marine Society*, 63 L.J. Q.B. 471.

Habeas Corpus :—

- (vii.) **Q. B. D.**—*Costs—Judicature Act*, 1890, ss. 4, 5.—The Court now has power, when granting an application for a writ of *habeas corpus*, to order the defendant to pay the costs of the application.—*Reg. v. Jones*, L.R. [1894] 2 Q.B. 882.

Hackney Carriage :—

- (i.) **Q. B. D.**—*Plying for Hire—Towns Police Clauses Acts, 1847, s. 45; 1889, s. 4—Public Health Act, 1875, s. 171.*—An omnibus was run without a licence in the following way:—Notices were exhibited that the omnibus was placed at the service of the public free of charge, and that voluntary contributions to support the omnibus would be welcomed. There was a conductor to give change. Some persons using the omnibus gave no money, but many did so. *Held*, that this was “plying for hire” within the meaning of the Acts.—*Cocks v. Mayner*, 70 L.T. 403.

Harbour :—

- (ii.) **Q. B. D.**—*Obstruction to Navigation—Discharge of Solid Matter in Suspension*—54 Geo. 3, c. 159, s. 11.—The appellants discharged water containing solid matter in suspension through a drain into a tidal brook, which flowed into a navigable river. The solid matter was deposited in the river, but it was not alleged or shewn that it tended to the injury or obstruction of the navigation of the river. *Held*, that they were rightly convicted under the section above-mentioned.—*The United Alkali Co. v. Simpson*, L.R. [1894] 2 Q.B. 116; 63 L.J. M.C. 141; 42 W.R. 509.

Highway :—

- (iii.) **Q. B. D.**—*Conviction—Defect—Encroachment—Certiorari—Title—Highway Act, 1854, s. 51.*—The defendant was convicted under the section mentioned, but the conviction did not state that he had “encroached” on the highway. *Held*, that if necessary the conviction might be amended, but that the omission of the word “encroach” did not make it bad, and that certiorari did not lie for such a defect. The defendant contended that he was the owner of the land which he was alleged to have taken from the highway, and that the justices could not adjudicate, there being a question of title to land. *Held*, that they had jurisdiction to decide whether the land was part of the highway or not.—*Reg. v. Bradley*, 70 L.T. 379.
- (iv.) **Q. B. D.**—*Rate—Exemption—Repair—Ratione Tenuræ—Alteration—Estoppel—Res Judicata*—The appellants were liable to repair a highway *ratione tenuræ* and the Court had decided that they were therefore exempt from highway rates. It was not however brought to the notice of the Court that the turnpike trustees, under whose control the highway had been, had materially altered its nature and course. *Held*, that the liability to repair *ratione tenuræ* and the exemption from rates had both ceased on the alteration of the road; and that the previous decision did not make the matter *res judicata*, the material fact of the alteration not having been before the Court.—*Heath v. Overseers of Weaverham*, L.R. [1894] 2 Q.B. 108; 70 L.T. 729; 42 W.R. 478.

Husband and Wife :—

- (v.) **P. D.**—*Divorce—Adultery—Condonation after Decree Nisi—Collusion—Material Facts.*—Where adultery has been condoned, and fresh adultery has afterwards taken place, such condonation does not disentitle the petitioner to a divorce. Where the condonation has taken place since the decree nisi it is a material fact which ought to be brought before the Court, and the suppression of it is a good ground for the intervention of the Queen’s Proctor, and for the rescission of the decree nisi.—*Rogers v. Rogers*, L.R. [1894] P. 161; 63 L.J. P. 97; 70 L.T. 699.
- (vi.) **C. A.**—*Divorce—Permanent Maintenance.*—(See Vol. 19, p. 85, v.) *Held*, that the husband must secure, as permanent maintenance, a sum amounting to one-third part of the limited profits only.—*Hanbury v. Hanbury*, 63 L.J. P. 105; 70 L.T. 569; 42 W.R. 434.

- (i.) **P. D.**—*Divorce—Variation of Settlements.*—Where a marriage settlement gives the wife power after the death of the husband to make provision for a second husband and family, the Court will not, after a divorce obtained owing to the misconduct of the husband, vary the settlement so as to allow the wife to exercise the power before his death.—*Pollard v. Pollard*, L.R. [1894] P. 172; 63 L.J. P. 104.

Infant:—

- (ii.) **Q. B. D.**—*Child Living in House Resided in by Prostitutes—Order for Removal to Industrial School—Industrial Schools Acts, 1866, s. 14; 1880, s. 1—Elementary Education Act, 1876, s. 13.*—Any person may bring a child before the justices with the object of having it sent to an industrial school, and it is not necessary to shew that an application has been made to the local authority to bring such child before the justices.—*Walker v. Laxton*, 70 L.T. 690.
- (iii.) **Ch. D.**—*Ante-Nuptial Settlement—Confirmation.*—The disability of coverture does not prevent an adult married woman affirming her ante-nuptial settlement made in infancy without the formality of an acknowledged deed. *Semble*, as to the mode of affirmation, that there is no distinction between the voidable covenant of a woman afterwards marrying and that of a man.—*In re Hodson's Settlement*, 42 W.R. 531.
- (iv.) **C. A.**—*Contract—not for Benefit of.*—The plaintiff, a boy of about thirteen, who was employed at a colliery, entered into an agreement with a railway company by which, in consideration of being allowed to travel to and fro between his home and the colliery, under a special arrangement between the colliery owner and the company, he agreed that the company should not be liable for any damage to himself or his property while travelling on the railway, although such damage might be caused by the negligence of the company's servants. *Held*, that the contract was not for his benefit, and was not binding on him.—*Flower v. L. & N.W.R.*, L.R. [1894] 2 Q.B. 65; 42 W.R. 519.
- (v.) **Q. B. D.**—*Contract—Insurance Society—Employers' Liability Act, 1880.*—An infant signed an agreement with his employers contracting himself out of the Employers' Liability Act, 1880, and agreeing to become a member of an insurance society which was largely supported by the employers. *Held*, that the contract, being to secure the infant employment, and containing nothing to prejudice his interests, was for his benefit, and was binding on him.—*Clements v. L. & N.W.R.*, 70 L.T. 531.
- (vi.) **Ch. D.**—*Gift to Class attaining Twenty-one—Conveyancing Act, 1881, s. 4.*—A testator, who died in 1888, gave his residuary estate upon trust for the child or children of T. living at the testator's death, and who should attain twenty-one. There was no maintenance clause. At the testator's death there were six children of T., all infants. On the eldest child attaining twenty-one, she claimed one-sixth of the original residue, and of the fund accumulated during her minority, and also the whole income of the original residue, and of the accumulated fund until the next child should come of age, and after that one-half of the income until another child should come of age, and so on until the youngest should come of age. *Held*, that she was entitled to one-sixth of the residue and accumulations, but not to the income of the remaining five-sixths.—*Holford v. Holford*, 70 L.T. 482.
- (vii.) **Ch. D.**—*Maintenance—Contingent Legacy.*—A testator specifically bequeathed a sum of stock upon trust for two infants contingently on their surviving him and attaining twenty-one. The sum of stock was standing in his name at his death. *Held*, that the stock was segregated

from the estate for the benefit of the legatees, and that the intermediate income would belong to them on attaining twenty-one, and that they were entitled to maintenance thereout.—*Clements v. Pearsall*, 70 L.T. 682.

Joint Contractor:—

- (i.) **Q. B. D.**—*Judgment on Cheque—Bar.*—An unsatisfied judgment against one joint contractor on a cheque given by him alone for the joint debt, is not a bar to an action against the other joint contractor on the original contract.—*Wegg Prosser v. Evans*, L.R. [1894] 2 Q.B. 101; 70 L.T. 664.

Jointure:—

- (ii.) **Ch. D.**—*Rentcharge—Right to have Arrears Raised by Sale.*—By settlement on the marriage of H. lands were limited to the use that after the death of H. the wife should receive a rentcharge out of the rents with powers of entry and distress. There was no term to secure the rentcharge. The rentcharge, some time after the death of H., fell into arrear, the owner of the land alleging that the rents were insufficient to pay it. The widow took out a summons for a declaration that the rentcharge was charged upon the corpus, and that the arrears might be raised by sale or mortgage. *Held*, that it was not necessary to decide whether it was charged on the corpus, for even if it was only a charge on the rents, there was jurisdiction to order the arrears to be raised by sale or mortgage, but that under existing circumstances a sale ought not to be directed. The summons was ordered to stand over with liberty to apply.—*Hambro v. Hambro*, 70 L.T. 684.

Landlord and Tenant:—

- (iii.) **C. A.**—*Breach of Covenant to Repair—Notice to Remedy—Costs of Surveyor and Solicitor—Conveyancing Acts, 1891, s. 14; 1892, s. 2, sub-s. 1.*—(See Vol. 19, p. 87, iii.) *Held*, reversing the decision of the Q. B. D., that the lessor could not recover expenses from an under-lessee, with whom he had no privity of contract, and that a lessee who avoids forfeiture by complying with a notice served on him under sect. 14 of the Act of 1891, is not relieved under the provisions of that Act, within the meaning of sect. 2, sub-sect. 1, of the Act of 1892.—*Nind v. Nineteenth Century Building Society*, L.R. [1894] 2 Q.B. 226; 42 W.R. 481.
- (iv.) **Ch. D.**—*Light and Air—Derogation from Grant.*—The plaintiff took a lease of premises for the purpose of his business as a timber merchant, and covenanted to carry on that business thereon. The defendants, successors in title to the lessors, erected on adjoining premises buildings which interfered with the access of air to the drying sheds, and made them less useful. *Held*, that the plaintiff was not, upon the evidence, entitled to an injunction, but was entitled to an inquiry as to damages.—*Aldin v. Latimer, Clark, Muirhead, and Co.*, 42 W.R. 553.

Lands Clauses Act:—

- (v.) **C. A.**—*Compulsory Purchase—Re-investment—New Building—Costs.*—The costs, charges, and expenses of an investment in the erection of new buildings of a fund paid into Court by a public authority on a compulsory purchase, and of obtaining the order, and the costs, charges, and expenses, including the architect's fees, properly incurred in or about or in relation to the contract for the execution of the works, were ordered to be paid by the public authority.—*In re Arden*, 70 L.T. 606.

Libel :—

- (i.) **C. A.**—*Interlocutory Injunction—Jurisdiction.*—The plaintiff had been tried for murder in Scotland, and a verdict of "Not proven" was returned. The defendants placed a portrait model of the plaintiff in their exhibitions in the "Chamber of Horrors." The plaintiff claimed that the exhibition was libellous. The Queen's Bench Division granted an interim injunction, on the ground that the exhibition was libellous. Upon appeal evidence was adduced which raised a question whether the plaintiff had not acquiesced in the exhibition. *Held*, that considering such evidence an interim injunction ought not to be granted. The Court of Appeal was divided on the question whether the exhibition was so clearly libellous that an injunction ought to have been granted apart from the evidence last mentioned. *Semble*, that in considering whether an interim injunction ought to be granted against the publication of a libel, the Court will make no distinction between a trade libel and one affecting personal character.—*Mouzon v. Madame Tussaud, Limited*, L.R. [1894] 1 Q.B. 671; 63 L.J. Q.B. 451; 70 L.T. 335.
- (ii.) **Q. B. D.**—*Newspaper—Apology and Payment into Court—Unconditional*—8 & 9 Vict., c. 75, s. 2—R.S.C., 1883, O. xxii., r. 22.—Payment into Court under the statute above-mentioned in an action for a newspaper libel, is unconditional. The rule above-mentioned does not deprive the plaintiff of his right to the sum paid in, though the jury may award him a smaller sum as damages.—*Dunn v. Devon and Exeter Constitutional Newspaper*, 63 L.J. Q.B. 342; 70 L.T. 593.
- (iii.) **P. C.**—*Newspaper—Imputation on Manager.*—An imputation upon a newspaper is not necessarily an imputation upon everybody connected therewith. A newspaper of which A. was manager and part proprietor published an erroneous report. Another newspaper of which X. was proprietor, in commenting on the mistake, spoke of A.'s newspaper as the M. Street Evening Ananias. *Held*, that this was not necessarily to be understood as an imputation of wilful falsehood upon the manager, and that the verdict of a jury in favour of X. should not be set aside as unreasonable.—*Australian Newspaper Co. v. Bennett*, L.R. [1894] A.C. 284; 70 L.T. 597.
- (iv.) **C. A.**—*Privilege.*—In order that the occasion on which a defamatory statement is made should be privileged, it is necessary that the person to whom it is made, as well as the person making it, should have an interest or duty in respect of the subject of the statement. It is not enough that the maker of the statement honestly and reasonably believes that the person to whom it is made has such an interest or duty.—*Hebditch v. McIlwaine*, L.R. [1894] 2 Q.B. 54; 42 W.R. 422.
- (v.) **C. A.**—*Trade—Rival Traders—Advertisement.*—The defendant retailed a patent food of the plaintiff's. He affixed to the plaintiff's goods a label stating that a patent food, used for similar purposes, of which he was the proprietor, was more nutritious than any other. *Held*, that if it were proved that the statement on the label was false with respect to the plaintiff's goods, and that it disparaged them and was likely to injure the plaintiff's business, an injunction could be granted to restrain the issue of the label.—*Mellin v. White*, 42 W.R. 549.

Licensing :—

- (vi.) **Q. B. D.**—*Alehouse—Renewal—Objection—Adjournment—Jurisdiction*—*Licensing Acts*, 1872, s. 42; 1874, s. 26.—No notice of objection to the renewal of an alehouse licence had been served before the general annual licensing meeting. At the meeting the chief constable objected

verbally, but did not state his grounds, and the justices adjourned the hearing to the day of the adjourned general meeting. *Held*, that the chief constable was not bound to state his grounds of objection at the general meeting, and that the justices had jurisdiction to adjourn the hearing.—*Daykin v. Parker*, L.R. [1894] 2 Q.B. 273; 63 L.J. M.C. 112; 42 W.R. 459.

Limitations:—

- (i.) **Ch. D.**—*Bonds held as Security—Special Agreement.*—A letter by creditor to debtor sending an account, which is not answered, is not an acknowledgment so as to prevent the statute from running. An obligation to pay a deficit which may arise on realisation of a security does not become a "debt" until sale of the security. B. lent M. a sum in 1881 which was invested in bonds which were handed to B. as security. B. received the dividends. In 1890 the bonds were sold, and B. sent M. an account, appropriating part of the proceeds towards the debt. *Held*, that this did not take the case out of the statute. A further advance was made by B. in 1882 on security of the bonds, with an express agreement to pay the deficiency on realisation. The bonds were sold in 1890. *Held*, that B.'s claim to the deficiency was not statute-barred.—*McDermott v. Boyd*; *e.p. Barker*, 42 W.R. 491.
- (ii.) **C. A.**—*Time at which Statute begins to Run—Ambassador—Immunity of absence beyond Seas—Return.*—Decision of Q. B. D. (see Vol. 19, p. 89, iv.) affirmed.—*Musurus Bey v. Gadban*, L.R. [1894] 2 Q.B. 352; 42 W.R. 545.

Local Government:—

- (iii.) **Ch. D.**—*Sewers—Private—Voluntary Rate—Public Health Act, 1875, s. 13, sub-s. (1), s. 14.*—A landowner constructed sewers to drain a town, of which he was the principal owner. He demanded and received for many years a voluntary sewer rate from persons who used the sewers whether they were his tenants or not. *Held*, that the sewers were made by him "for his own profit," and did not vest in the local board.—*The Local Board for Minehead v. Luttrell*, L.R. [1894] 2 Ch. 178; 63 L.J. Ch. 497; 70 L.T. 446.

Lunatic:—

- (iv.) **C. A.**—*Maintenance—Wife—Execution Creditor.*—The master approved a scheme which provided for the payment of £1 a week for the support of the lunatic, who was in an asylum, and £1 a week to his wife. Judgment creditors of the lunatic opposed. *Held*, that the provision for the lunatic's wife must be struck out, and that the order should be without prejudice to any charge or priority the execution creditors might have obtained by lodging their writ of *fi. fa.* with the sheriff.—*In re Winkle, Jun.*, 70 L.T. 710; 42 W.R. 513.

Market:—

- (v.) **Ch. D.**—*Disturbance—Private Sale-yard.*—The plaintiffs had the sole right of holding a market for pigs, and penalties were imposed on anyone selling pigs "except in some fair or market lawfully authorized, or in his own dwelling-place, shop, or place of business, or on any farm or land in his occupation." The defendants were an association of six persons, who had set up a sale-yard for pigs, to which the public had access during market hours, and where the pigs of anyone were sold. There were common ways, and a common room in the sale-yard, but all the sales of pigs were effected through the members of the association, to whom alone the stalls were let, and a charge was paid by them to the association for each pig sold, whether on the premises or not.

There was evidence that sales took place on portions of the yard not let to the individual defendants. *Held*, that what the defendants were doing as an association and as individuals was not within the exception, and was a disturbance of the plaintiffs' market rights.—*Mayor, &c., of Birmingham v. Foster*, 70 L.T. 371.

Marriage Settlement:—

- (1.) **H. L.**—*Infant—Repudiation—Effect of.*—Decision of C. A. (*see* Vol. 17, p. 134, i.) affirmed.—*Edwards v. Carter*, 63 L.J. Ch. 100.

Married Woman:—

- (ii.) **Ch. D.**—*Separate Estate—Sequestration—Arrears of Rent—Married Women's Property Act, 1882, ss. 1 (2), 19.*—A writ of sequestration was issued, pursuant to an order, against such part of the estate as was free from restraint on anticipation of a married woman, tenant for life of real estate, subject to such a restraint. An interim injunction was granted to restrain her from receiving the rents due on the quarter day following the issue of the writ. *Held*, that the injunction could not be sustained, as the sequestrators were only entitled to seize the property free from restraint. *Held*, also, that the Court would not make a fresh order for sequestration, as there was no evidence that there was any property in existence which it could affect.—*Hood-Barrs v. Cathcart*, 70 L.T. 622; 42 W.R. 594.

Metropolis Management:—

- (iii.) **Q. B. D.**—*Building—Party Wall—Metropolitan Building Act, 1855, s. 27, r. 4.*—The rule mentioned is not confined to warehouses and buildings *ejusdem generis* with warehouses. The appellants erected a building in eight floors. The basement was to be used for packing goods, the ground floor as a retail shop, and the floors above for dining-rooms and kitchens. *Held*, that the building was to be used partly for the purposes of trade, and that the rule applied.—*Holland v. Wallen*, 70 L.T. 376.
- (iv.) **C. A.**—*Building Line—Metropolis Management Act, 1882, s. 75.*—Decision of Q. B. D. (*see* Vol. 19, p. 92, i.) affirmed.—*Wendon v. L.C.C.*, L.R. [1894] 1 Q.B. 812; 63 L.J. M.C. 107; 70 L.T. 440.
- (v.) **Q. B. D.**—*Street—Width—Metropolis Management Acts, 1855, s. 250; 1878, s. 6.*—Where a street was at the passing of the Act of 1878 a country road, and not formed or laid out for building, the provisions of sect. 6 of that Act, requiring that the external wall or the boundary of the forecourt shall not be less than the prescribed distance from the centre of the road, are applicable.—*London County Council v. Mitchell*, 63 L.J. M.C. 104.
- (vi.) **C. A.**—*Street—Obstruction—Costermongers—Michael Angelo Taylor's Act, s. 65—Metropolitan Streets Management Act, 1867, s. 6; Amendment Act, 1867, s. 1.*—The power conferred on the persons having the control of the pavements to seize goods and barrows remaining there for longer than is required to load and unload is impliedly suspended as against costermongers so long as they act according to the police regulations.—*Austin v. Vestry of St. Mary, Newington*, 70 L.T. 509; *Keep v. Vestry of St. Mary, Newington*, 63 L.J. Q.B. 369.

Mortgage:—

- (vii.) **C. A.**—*Priorities—Charge of Annuities—Receivership Deed—Notice.*—Decision of Ch. D. (*see* Vol. 19, p. 50, v.) affirmed.—*Cradock v. Scottish Provident Institution*, 70 L.T. 718.

- (i.) **Ch. D.—Consolidation.**—The owner of several properties, in the years 1868 to 1866, mortgaged them to different persons, and in 1868 gave a second mortgage on all the properties to H. In 1871 and 1873 all the first mortgages except one were transferred to R. In 1885 H. transferred the second mortgage to P., and in 1890 the remaining first mortgage was transferred to R. *Held*, that R. was entitled to consolidate them all against P.—*Pledge v. Carr*, L.R. [1894] 2 Ch. 328; 70 L.T. 586.
- (ii.) **Ch. D.—Consolidation.**—A. owned Blackacre and Whiteacre. In February, 1864, he mortgaged Blackacre to S., and in July, 1864, he gave a second mortgage on it to X. In 1863, 1865, and 1866 he mortgaged Whiteacre to Z. and others. In 1871 and 1873 the first mortgages were both transferred to R. In 1884, A. mortgaged both properties to M., and in 1885 to P. (in each case subject to the prior incumbrances). In July, 1890, the second mortgage of X. on Blackacre was transferred to P., who in October, 1890, sold Blackacre under the power of sale in the mortgage to M., subject only to the first mortgage to S., then vested in R. *Held*, that R. could not consolidate the first mortgages, so as to prevent M. from redeeming Blackacre alone, as the union of the mortgages had not taken place until the second mortgage on Blackacre had been effected; and that the right of redemption was not affected by M. or P. being already puisne incumbrancers on both properties when they took transfers of X.'s mortgage.—*Minter v. Carr*, L.R. [1894] 2 Ch. 321; 70 L.T. 583.
- (iii.) **P. C.—Sale by Mortgagee to Himself—Sale by Him—Improvements.**—A mortgagee sold the mortgaged property under his power of sale by auction, ostensibly to a third person, but really to himself; he took possession, effected improvements, and resold to A. The mortgagor sued the mortgagee and A. for redemption. *Held* (1), that the mortgagee's abortive sale to himself was not shewn to be fraudulent; (2) that the sale to A. was a valid exercise of the power of sale; (3) that A. was under no obligation to give notice of the sale to the mortgagor, or to see to the application of the purchase-money; (4) that the mortgagee should be allowed the costs of the improvements, so far as they enhanced the value of the property.—*Henderson v. Astwood*, L.R. [1894] A.C. 150.

Municipal Corporation:—

- (iv.) **Ch. D.—Borough Funds—Misapplication—Subsidy to College—Mayor's Salary—Municipal Corporations Act, 1882, ss. 143, 144.**—A corporation was empowered by special Act to contribute £10,000 towards the purchase of a site for a college, and resolved that that sum should be paid on certain property being conveyed to the college. The purchase remained in abeyance, and the college was carried on in suitable premises, rented for the purpose. *Held*, that the payment out of the borough fund to the college of £400, being a year's interest on the £10,000, could not be justified either under the special Act, or as a payment "for the public benefit of the inhabitants and improvement of the borough." *Held*, that the payment out of the borough fund of £650, which was voted in 1893 as an addition to the Mayor's salary for the purpose of celebrating the marriage of the Duke of York, was not illegal, though it was in fact not paid to the Mayor, but carried to a separate account, and expended by a committee. But a payment made in the form of an addition to a mayor's salary is not legal unless it is a *bonâ fide* increase of salary.—*Attorney-General v. Corporation of Cardiff*, L.R. [1894] 2 Ch. 337; 70 L.T. 591.

- (i) **Q. B. D.**—*Election of Mayor—Office of Profit—Personal Interest—Interest in Lease—Vote of Chairman—Municipal Corporations Act, 1882, s. 12, sub-s. 2 (a); s. 15, sub-s. 4; s. 22, sub-s. 3; s. 42, sub-s. 1; s. 61, sub-s. 4.*—Where a salary is attached to the office of Mayor, a candidate may not vote for himself, as he has a pecuniary interest. The validity of a vote given by a disqualified person in virtue of a corporate office, may be enquired into on an election petition. The section which provides that a person shall not be disqualified from being a councillor by virtue only of having an interest in a lease in which the council is interested, refers to a lease for a day as well as to a longer lease. The chairman, unless disqualified, is not prevented from voting in the first instance by the fact that he has a casting vote.—*Nell v. Longbottom, L.R. [1894] 1 Q.B. 767; 63 L.J. Q.B. 490; 73 L.T. 499.*

Novation :—

- (ii.) **C. A.**—*Banking Firm—Death of Partner—Alteration of Account.*—After the death of a partner in a banking firm a customer transferred a sum from current to deposit account. On a claim against the deceased partner's estate on the deposit note: *Held*, that there was a novation of the debt, and that the estate of the deceased was discharged.—*Head v. Head; Tester's Case, L.R. [1894] 2 Ch. 236; 70 L.T. 608; 42 W.R. 419.*

Nuisance :—

- (iii.) **C. A.**—*Adjoining Owners—Tree Overhanging Boundary—Right to Cut—Notice.*—A person may cut away the branches of a tree belonging to his neighbour which overhang his land, and the owner of the tree is not entitled to any notice unless his land is entered upon to effect such cutting. The age of the branches is not material.—*Lenmon v. Webb, 70 L.T. 712.*
- (iv.) **Ch. D.**—*Electric Lighting—Leaseholder and Reversioner—Vibration—Structural Damage—Electric Lighting Acts, 1882 & 1888.*—Action by freeholder and leaseholder of a public-house to restrain the use of a dynamo or other machinery, so as to injure the premises by vibration or otherwise, and so as to cause a nuisance by vibration or noise. *Held*, that statutory power given to do a thing does not justify the doing of it so as to cause a nuisance, unless by express language or necessary implication. The express licence given by the Act of 1882 to break up streets goes to shew that other nuisances are not allowed. *Held*, on the evidence that the defendants had damaged the plaintiffs' premises, so as to make them less comfortable, so as to damage the structure, and to decrease the value. *Held*, that the leaseholder could be compensated by damages, and that he ought to have his costs. *Held*, that the freeholders had a right of action in respect of structural damage, and that there should be an enquiry as to damages, but that their action must be dismissed with costs so far as it sought for an injunction.—*Meux Brewery Co. v. City of London Electric Lighting Co., 70 L.T. 762.*
- (v.) **Q. B. D.**—*Noise in Street—By-Law—Proof.*—A by-law of a borough provided that any person who made a noise in the streets of the borough to the annoyance of the inhabitants should be guilty of an offence. *Held*, that it was not necessary, upon a summons under the by-law, to prove that more than one person had, in fact, been annoyed.—*Innes v. Newman, L.R. [1894] 2 Q.B. 292; 70 L.T. 689.*
- (vi.) **C. A.**—*Sewage—Rivers Pollution Act, 1876, ss. 3, 10, 20.*—The county court judge dismissed a plaint against a local board for polluting a stream, on the ground that it had succeeded to an old system of sewerage, which caused sewage matter to pass into the stream, and

had done nothing to increase the nuisance. *Held*, that there was evidence that the local board had knowingly permitted sewage to pass into the stream, and that the matter ought to be remitted to the county court judge to consider whether they had used the best available means to render it harmless.—*Yorkshire West Riding County Council v. Holmfirth Local Board*, 63 L.J. Q.B. 485.

- (i.) **C. A.**—*Waterworks—Main Bursting—Liability*.—A main belonging to a waterworks company burst, and the plaintiff's premises were flooded. *Held*, that as the main had been constructed under statutory authority, and the company were not guilty of negligence, they were not liable in damages.—*Green v. Chelsea Waterworks Co.*, 70 L.T. 547.

Partnership:—

- (ii.) **Ch. D.**—*Action for Dissolution—Insanity—Interim Injunction against Interference*.—The plaintiff in an action for dissolution of a partnership, on the ground of the insanity of the defendant, a lunatic not so found, which action had been ordered to stand over, moved for an interim injunction to restrain the defendant from interfering with the business, or dealing with the partnership assets. *Held*, that the order ought to be made.—*J. v. S.* (No. 2), 70 L.T. 758.
- (iii.) **Ch. D.**—*Dissolution—Insanity—Partnership Act, 1890, s. 35 (a) (f)*.—In an action for dissolution of partnership against a lunatic not so found, the Court refused to decree an immediate dissolution, the evidence shewing that there was a possibility of the defendant's ultimate recovery, but ordered the cause to stand over till after the long vacation.—*J. v. S.* (No. 1), 70 L.T. 757.

Patent:—

- (iv.) **Ch. D.**—*Revocation—Petition—Consent on Special Grounds*.—The Pharmaceutical Society, with the leave of the Attorney-General, petitioned for the revocation of a patent for a medical compound on certain grounds, which included want of novelty. The respondent consented to an order for revocation, but solely for want of novelty.—*Order made for revocation with costs*.—*In re Rendell's Patent*, 70 L.T. 756.

Poison:—

- (v.) **Q. B. D.**—*Sale of—Compound—Pharmacy Act, 1868, ss. 1, 15*.—In a prosecution under the Act against a vendor of a compound containing a scheduled poison, the question is whether the compound contains the poison in such a quantity as to make the compound in its entirety a poison under the Act. The defendant sold a compound containing a small quantity of a scheduled poison. There were directions on the bottle stating the proper dose for adults, children, and infants. There was evidence that a whole bottle taken at once by a child would certainly be injurious, and might be fatal, but not in the case of an adult, except in case of ill-health. *Held*, that there was evidence to support the finding of the county court judge that the compound was a poison within the Act.—*Pharmaceutical Society v. Armson*, 70 L.T. 735.

Poor Law:—

- (vi.) **Q. B. D.**—*Maintenance of Pauper—Member of Friendly Society—Divided Parishes Act, 1876, s. 23*.—When guardians apply to justices for an order directing the officers of a friendly society to pay to them moneys alleged to be due to a pauper member of the society, it is a condition precedent that the pauper "shall be entitled to a periodical payment;" and, if that point is disputed, it must be settled in the manner provided for the settlement of disputes between the society and its members before the justices can entertain the application.—*Reg. v. Richardson*, L.R. [1894] 2 Q.B. 323; 42 W.R. 540.

- (i.) **H. L.**—*Settlement—Residence Apart from Parent while under Sixteen—Divided Parishes Act, 1876, s. 34.*—Decision of C. A. (see Vol. 18, p. 50, ii.) reversed.—*West Ham Guardians v. Bethnal Green Churchwardens*, L.R. [1894] A.C. 230; 63 L.J. M.C. 97.
- (ii.) **C. A.**—*Rating—Docks—Different Parishes—Hypothetical Tenant.*—A dock company had a number of docks, some in communication and some separate, and also quays, warehouses, offices or works. The docks were in four parishes in the S. union. In some cases a dock was in two different parishes, and in some cases a dock was partly outside the union. One dock due was taken for the use of all the docks. The dock company prepared accounts of the receipts and expenditure in each parish, shewing the amounts of dock dues earned in each parish. The guardians found the rateable value of the whole undertaking, and deducted the value of all the property other than docks. The balance, being the rateable value of the docks, they divided amongst the parishes in proportion to water area. *Held*, that, as the earnings in each parish could be shewn, the assessment was bad. The dock company was authorised to make junctions between their lines of railway and those of a railway company, but were forbidden to take tolls for the use of their railways. *Held*, that the railways ought to be assessed at the rate at which they might, but for the restriction on taking toll, be let to a hypothetical tenant.—*Hull Docks Co. v. Guardians of Sculcoates Union*, L.R. [1894] 2 Q.B. 69; 70 L.T. 742.
- (iii.) **Q. B. D.**—*Rating—Harbour Dues.*—The appellants, commissioners for the improvement of a harbour, were empowered to levy "harbour dues" for all vessels entering the harbour, and "goods dues" and "ballast dues" for goods and ballast shipped or unshipped within the harbour. They occupied certain quays in the harbour, but the soil of the harbour was not vested in them, and there were other places in the harbour besides the said quays where ships could load and unload. The facilities afforded by the said quays largely contributed to the amount of dues received by the appellants. *Held*, that no part of the harbour dues, goods dues, and ballast dues received by the appellants was sufficiently connected with their occupation of the quays to be taken into account as enhancing their rateable value.—*Blyth Harbour Commissioners v. Churchwardens, &c., of Newsham and South Blyth*, L.R. [1894] 2 Q.B. 298; 63 L.J. M.C. 145.
- (iv.) **C. A.**—*Rating—Mill—Stoppage of Work through Strike—Occupation during Stoppage.*—Two days before an assessment was made on the appellants' mill, a strike occurred, and the mill was stopped. It was occupied by the appellants during the stoppage for the purpose of keeping the machinery in order. The appellants objected to the valuation list. When the objections were heard by the assessment committee who refused to amend the list, the strike had ended, after lasting several months. *Held*, that the assessment was valid, as the assessment committee were not bound to consider the particular strike, and it did not appear that they had disregarded the contingency of strikes. *Held*, also, that the assessment having been properly made, could not be reduced by treating the mill as a warehouse for storing machinery during the strike.—*Hoyle & Jackson v. Assessment Committee for Oldham*, L.R. [1894] 2 Q.B. 372; 70 L.T. 741.
- (v.) **C. A.**—*Rating—Lighting Rate—"Coal Mines"—"Land"—Poor Relief Act, 1601.*—Decision of Q. B. D. (see Vol. 19, p. 90, i.) affirmed.—*Thursby v. Churchwardens of Briercliffe*, L.R. [1894] 2 Q.B. 11.

- (i.) **Q. B. D.**—*Rating—Sewage Works*.—The appellants occupied a sewage farm and works, which comprised a pumping station, a main which conveyed the sewage to the tanks, from which it was distributed by sewage carriers, and effluent culverts which discharged the effluent. *Held*, that the main, the sewage carriers, and the effluent culverts were all parts of the sewage works, and that the appellants were rateable in respect thereof. — *Mayor, &c., of Leicester v. Churchwardens, &c., of Beaumont Leys*, 70 L.T. 659.

Power:—

- (ii.) **Ch. D.**—*Power of appointing Income—Construction*.—A settlement gave a testamentary power of appointing the income of a fund, and trusts of the capital were declared "subject to such appointment." *Held*, that the power extended to the capital.—*Mounsey v. Buston*, L.R. [1894] 1 Ch. 675; 68 L.J. Ch. 496; 70 L.T. 727.

Practice:—

- (iii.) **Ch. D.**—*Administration—Persons served with Notice of Judgment—Notice of Hearing on Further Consideration*—R.S.C., 1883, O. xvi., rr. 40, 41, 42; O. xxxvi., r. 21.—Beneficiaries under a will who have been served with notice of a judgment for administration in an action by one of the beneficiaries against the trustees, and have not entered an appearance, need not be served with notice of the hearing on further consideration, where the order to be asked for does not require them to pay money or affect them personally.—*Tyson v. Johnson*, 70 L.T. 624.
- (iv.) **Q. B. D.**—*Amendment—Writ for Service out of Jurisdiction*—R.S.C., 1883, O. xi.; O. xxviii., rr 1, 6.—The provisions for amendment of indorsements and pleadings apply to writs issued for service out of the jurisdiction, and a claim indorsed on such a writ may be amended without the necessity of re-serving the writ or notice thereof after amendment. Where leave for amendment is necessary, the plaintiff must shew that the amended claim is in respect of a cause of action which would have entitled him, had it been preferred in the first instance, to leave to issue a writ for service out of the jurisdiction.—*Holland v. Leslie*, L.R. [1894] 2 Q.B. 346; 42 W.R. 560.
- (v.) **C. A.**—*Appeal—Court of Passage*.—By sect. 10 of the Liverpool Court of Passage Act, 1893, an appeal lies direct to the Court of Appeal from the judgment of the judge of the Court upon the trial of an action.—*Anderson v. Dean*, L.R. [1894] 2 Q.B. 222; 42 W.R. 472.
- (vi.) **C. A.**—*Company—Order in Winding-up—Appeal—Companies Act, 1862, s. 124*.—A person who is not a party to, but is bound by, an order made in a winding-up, cannot appeal therefrom without the leave of the Court which made the order.—*In re Securities Insurance Co.*, 70 L.T. 609; 42 W.R. 465.
- (vii.) **Ch. D.**—*Conveyance by Wife—Application to Dispense with Husband's Concurrence*.—Under the present arrangements of business, an order under sect. 91 of the Fines and Recoveries Act, 1833, will not be made in the Chancery Division in an ordinary case, though there may be jurisdiction in that Division to make it, and a judge of that Division might exercise such jurisdiction under special circumstances.—*In re Giles*, 70 L.T. 757.
- (viii.) **Q. B. D.**—*Costs—Stay of Proceedings—Company in Liquidation*.—On an application to stay proceedings in an action against a company in voluntary liquidation, the judge and the master in chambers have jurisdiction to order the plaintiff to pay the costs of the proceedings.—*Freeman v. General Publishing Co.*, L.R. [1894] 2 Q.B. 380; 42 W.R. 539.

- (i.) **Q. B. D.**—*Discovery—Answer tending to Criminate.*—Maintenance is an indictable offence at common law, and the defendant in an action charging him therewith may refuse to answer interrogatories on the ground that they may criminate him.—*Alabaster v. Harness*, 70 L.T. 375.
- (ii.) **C. A.**—*Discovery—Postponement of Inspection—Question of Law—Amendment of Pleadings*—R.S.C., 1883, O. xxv., r. 2; O. xxxi., r. 20.—A common order for discovery was made against defendants, who made an affidavit of documents, of which there were a great number, and then applied by summons that inspection might be postponed until certain questions of law therein mentioned, which were not raised by the pleadings, had been determined. *Held*, that the statement of defence should be amended so as to raise the points of law in question, and that there was then jurisdiction to order the points of law to be set down for argument, and to postpone inspection until they had been disposed of. *Semble*, that Order xxxi., r. 20, is not to be construed so narrowly as to mean that the right to discovery or inspection is determined by the common order, or that the Court cannot after such an order make a subsequent order that points of law should be determined before inspection.—*Lever v. Land Securities Co.; De Carteret v. Land Securities Co.*, 70 L.T. 323.
- (iii.) **C. A.**—*Discovery—R.S.C., 1883, O. xxxi., r. 6—R.S.C., 1893, O. xxxi., r. 2.*—A judge, by allowing interrogatories under the rule first mentioned, does not preclude the party interrogated from taking objection under the later rule. Such allowance is in the discretion of the judge, from whose orders no appeal will be entertained, unless some mistake in principle is made, or some substantial injustice done.—*Peek v. Ray*, 42 W.R. 499.
- (iv.) **C. A.**—*Divorce—Evidence—Right of Co-Respondent to Cross-Examine Respondent.*—Evidence given by one party affecting another party in the same litigation cannot be made admissible against such party unless there is a right of cross-examination. The evidence of a respondent cannot, therefore, be used against a co-respondent after liberty to cross-examine has been refused. *Quere*, whether a co-respondent has a right to cross-examine a respondent and *vice versa*.—*Allen v. Allen*, 42 W.R. 579.
- (v.) **C. A.**—*Evidence—Witness Called by Judge—Right to Cross-Examine.*—The judge has a right to call and examine a witness at a trial, and it is in his discretion whether cross-examination should be allowed. But, as a general rule, when material evidence is given by a witness so called, the party adversely affected should be allowed to cross-examine; but only as to such of the witness's answers as are material.—*Coulson v. Desborough*, L.R. [1894] 2 Q.B. 316; 70 L.T. 617; 42 W.R. 449.
- (vi.) **C. A.**—*Execution—Receiver.*—There is no jurisdiction to make an order for a receiver by way of equitable execution except in cases in which, before the Judicature Act, the Court of Chancery would have had jurisdiction to make such an order.—*Harris v. Beauchamp Bros.*, No. 2, L.R. [1894] 1 Q.B. 801; 63 L.J. Q.B. 480; 70 L.T. 636; 42 W.R. 451.
- (vii.) **Q. B. D.**—*Justices—Appeal from—Case stated—Lodging Case*—20 & 21 Vict., c. 43, s. 2.—Upon an appeal from justices by way of a case stated, the appellant must lodge the case at the Crown office within three days after receiving it.—*Aspinall v. Sutton*, L.R. [1894] 2 Q.B. 349.

- (i.) **Ch. D.**—*Lands Clauses Act, s. 69—Investment—Supplemental Petition—Costs.*—Land had been taken by the Metropolitan Board of Works. An order was made on petition for the investment of part of the purchase-money in effecting works on the estate of which the land formed part. It appeared that the estimated cost of the works would be exceeded, and a supplemental petition was presented for leave to invest an additional sum of £375. *Held*, that the application, being in effect to vary an order made on petition, must be made by petition, and not by summons, and that the London County Council must pay the costs of the supplemental petition.—*In re Sandars*, 70 L.T. 755.
- (ii.) **P. C.**—*Order for New Trial Reversed—Verdict—Evidence.*—The Full Court of the Supreme Court of Queensland had ordered a new trial of an action tried before a jury. *Held*, that the verdict ought to stand, as there was a conflict of evidence, and the verdict was one which the jury could reasonably find.—*Brisbane (Council of) v. Martin*, L.R. [1894] A.C. 249.
- (iii.) **Q. B. D.**—*Partners—Action against—Dissolution of Firm—R.S.C.*, 1883, O. xlviii. a., rr. 1, 3, 8.—Where an action has been brought and judgment obtained in the firm name against partners, if one of them had, to the knowledge of the plaintiff, retired from the firm before the commencement of the action, and has not appeared in his own name nor admitted that he is, nor been adjudged to be, a partner, the plaintiff cannot issue execution against him, nor have the question of his liability tried, unless he has served him with the writ.—*H'gram v. Cor, Sons, Buckley & Co.*, L.R. [1894] 1 Q.B. 792; 70 L.T. 656.
- (iv.) **Ch. D.**—*Patent—Petition for Revocation—Service out of Jurisdiction.*—A petition for revocation of a patent was served on two out of three patentees, the third being abroad. *Ordered*, that the petition be put on the witness list, but not to come on for hearing without leave, unless the absent patentee appeared by counsel on notice to him of the presentation of the petition.—*In re Kay's Patent*, 70 L.T. 756.
- (v.) **Ch. D.**—*Payment out of Court—Petition or Summons—R.S.C.*, 1883, O. lv., r. 2, sub-s. 1.—*Held*, that an application for payment of money out of Court ought to be made by petition and not by summons, where the title of the applicants depended on the proof of their identity and age, and of the deaths of two persons, and where there was a question upon the construction of a will under which they claimed.—*E. p. N.E.R.*; *in re Hicks*, 70 L.T. 529.
- (vi.) **Q. B. D.**—*Pleading—Defence—General Denial—Specific Traverse—R.S.C.*, 1883, O. xix., r. 17.—The plaintiff in his statement of claim set forth certain allegations of fact to support a claim for personal injuries owing to the alleged negligence of the defendants. The defendants "denied each and all the several statements and allegations set out in paragraph 2 of the statement of claim," and repeated the same form of denial with regard to paragraph 3. *Held*, that though the defence did not specifically traverse each allegation denied, it did in effect specifically deny every material allegation; that it was not embarrassing, and that if it were really required by the plaintiff it could be amended by repeating the denial specifically to each allegation.—*Adkins v. North Metropolitan Trams Co.*, 63 L.J. Q.B. 861.
- (vii.) **Ch. D.**—*Receiver—Irish Land—Discretion of Court—Judicature Act (Ireland)*, 1877, s. 75.—On an application for the appointment of a receiver of Irish land, great weight ought to be given to the provisions for dealing with such matters under the Irish Judicature Act, 1877. But where the applicants were willing that the present agent of the Irish estates, who had never had any difficulty in collecting the rents, should be appointed receiver, the Court made the appointment.—*Bolton v. Curre*, 70 L.T. 759.

- (i.) **Q. B. D.**—*Service of Writ—Foreign Firm—English Agent—R.S.C.*, O. xlviii., r. 1.—A writ was issued against a firm under its firm name. The firm was a foreign firm carrying on business abroad, but the members were British subjects. They employed the plaintiff to purchase goods for them in England, but one of the partners was generally in England and chose the goods. The writ, which was for moneys owing to the plaintiff in respect of goods purchased for the defendants and paid for by the plaintiff, was served on one of the partners while in England. *Held*, that the defendant firm did not carry on business in England, and that there was no authority for issuing the writ in the firm name, and that the issue and service ought to be set aside.—*Singleton v. Roberts, Stocks & Co.*, 70 L.T. 687.
- (ii.) **C. A.**—*Summons—"Originating Summons"—Delivery of Papers—R.S.C.*, 1883, O. lxxx., r. 1.—An originating summons is a summons by which proceedings, which under the old practice would have been commenced by bill in Chancery or by writ, are commenced without writ. A summons calling on a solicitor to deliver up his client's papers is not an "originating summons."—*In re Holloway; e.p. Pallister*, L.R. [1894] 2 Q.B. 163; 70 L.T. 615; 42 W.R. 438.
- (iii.) **Ch. D.**—*Third-party Notice—Premature Application—Double Character of Plaintiff—R.S.C.*, 1883, O. xvi., r. 48.—The plaintiff was suing in her own right. The defendants, before delivering their defence, asked leave to serve a third-party notice on her in the character of executrix. *Held*, that the application was premature, and that the rule did not apply, as the plaintiff was already a party.—*Gileon v. Gileon*, L.R. [1894] 2 Ch. 92; 70 L.T. 728; 42 W.R. 425.

Principal and Agent:—

- (iv.) **C. A.**—*Authority to Pledge Credit of Principal—Co-trustees.*—The defendants, mother and son, as trustees of a will, were joint owners of a business, which under the trusts was to be carried on by the mother as agent for the trustees. The son was employed by the mother to purchase goods for the business, which were paid for by cheques bearing the signatures of mother and son as drawers. A person who had previously received such cheques in payment, sued the mother and son for the price of goods sold to the son for the business. *Held*, that there was evidence that the son was authorised to pledge the joint credit of his mother and himself.—*Brazier v. Camp*, 63 L.J. Q.B. 257.

Public Health:—

- (v.) **Q. B. D.**—*Abatement of Nuisance—Summons—Notice—Public Health (London) Act, 1891, s. 128, sub-ss. 1, 3.*—A summons to abate a nuisance under the Act may be addressed "to the owner or occupier" of the premises where the nuisance arises without any further name or description; and may be served on some person on the premises, or by fixing it conspicuously on the premises.—*Reg. v. Mead*, L.R. [1894] 2 Q.B. 124; 68 L.J. M.C. 128; 70 L.T. 766; 42 W.R. 442.

Restraint of Trade:—

- (vi.) **C. A.**—*Agreement not to Carry on Business.*—Decision of Ch. D. (see Vol. 19, p. 100, v.) affirmed.—*Smith v. Hancock*, 63 L.J. Ch. 477; 70 L.T. 578; 42 W.R. 465.

Revenue:—

- (vii.) **Q. B. D.**—*Account—Stamp Duty—Land—Conversion—Customs, &c., Acts, 1881, s. 88, sub-s. (2); 1889, s. 11.*—By post-nuptial settlement land was conveyed to hold in trust for the settlor and his wife for

their respective lives, with power to sell at the request of the settlor or his wife, and after their deaths at the discretion of the trustee. The trusts of the proceeds were declared by a deed of even date. No request for sale was made, and the land still remained unsold. The settlor died leaving a wife and children. *Held*, that there was a conversion, that the land must be regarded as money from the date of the settlement, and that account duty was payable at the death of the settlor.—*Attorney-General v. Dodd*, L.R. [1894] 2 Q.B. 150; 63 L.J. Q.B. 319; 70 L.T. 660; 42 W.R. 524.

- (i.) **H. L.**—*Inventory or Probate Duty—Legacy Duty—Legatees identified by Reference to Will of another Testator*.—A. bequeathed a share of her residue to B., and failing him, to his executors and representatives. B. predeceased A., leaving a will by which he appointed executors. *Held*, that the share of A.'s residue was not part of the personal estate and effects of B., and therefore that the executors of B.'s will were not liable to pay a second inventory (or probate) duty and legacy duty on the ground that it passed under B.'s will.—*Lord Advocate v. Bogie*, L.R. [1894] A.C. 83; 70 L.T. 533.
- (ii.) **Q. B. D.**—*Income Tax—Profits—Deductions—Interest on Short Loans*.—A foreign firm had a branch house in London which was carried on as a separate business, with a separate capital. The London house obtained short loans from the foreign house and from bankers, and paid interest thereon. *Held*, that such interest could not be deducted as a necessary expenditure in ascertaining the profits.—*Anglo-Continental Guano Works v. Bell*, 70 L.T. 670.
- (iii.) **Q. B. D.**—*Income Tax—Expenses*.—Where a company is formed for the purpose of lending money, and it borrows money for the purpose of lending it in the course of business, the money being obtained by the means of the issue of debentures, *held*, that the expenses of such issue were not "expenses" in respect of which a deduction can be claimed in assessing profits for income tax.—*Texas Land and Mortgage Co. v. Holtham*, 63 L.J. Q.B. 496.
- (iv.) **Q. B. D.**—*Stamp—Bills of Exchange—Coupon for Interest—Re-Issue—Stamp Act, 1870, s. 48—Sched.—Revenue Act, 1889, s. 16*.—A foreign government issued bonds. They were provided with talons and interest coupons for ten years, the talons bearing a statement that the bearer would at the expiration of the ten years receive a fresh talon and coupons. *Held*, that the new coupons, when issued, were bills of exchange payable on demand, and that, since they were not attached to and issued with either the security or the agreement for renewal or extension of time for payment thereof, they were not exempt from duty, and must bear a 1d. stamp.—*Rothschild & Sons v. Inland Revenue Commissioners*, L.R. [1894] 2 Q.B. 142; 70 L.T. 667; 42 W.R. 542.
- (v.) **Q. B. D.**—*Stamp—Medicine—"Held out to Public"—Stamp Act, 1804, Sched. B—Medicines Stamp Act, 1812, ss. 1, 2 & Sched.*—The respondents issued a price-list, which was distributed gratis, and described a certain powder and tincture as beneficial for specified ailments, and the bottles of tincture were wrapped in handbills which described it in terms similar to those in the price-list. *Held*, that by distributing the price-list, the respondents had held out or recommended the medicines to the public, by public notice or advertisement within the meaning of the schedule to the latter Act, that it was not necessary that the advertisements should be delivered with or affixed to the medicine, that the case was not within the exemption in the schedule, and that stamp duty was payable.—*Smith v. Mason & Co.*, L.R. [1894] 2 Q.B. 363.

- (i.) **Q. B. D.**—*Stamp Duty Acts, 1881 and 1893—Gift within twelve months of Death.*—A gift made within twelve months preceding the death of the donor, without any reservation or power of revocation, and not being a *donatio mortis causa*, is liable to account stamp duty.—*Attorney-General v. Booth*, 63 L.J. Q.B. 356.

Right of Way:—

- (ii.) **C. A.**—*Open Space—Public User—Dedication.*—Decision of Q. B. D. (see Vol. 19, p. 58, ii.) affirmed.—*Robinson v. Corpen Local Board*, 63 L.J. Q.B. 235.

Riparian Owner:—

- (iii.) **C. A.**—*Watercourse—Artificial Channel.*—The owner of land through which water flows by an artificial channel is not entitled to appropriate all such water. Nor is he entitled to diminish the flow of water by abstracting water from the springs which feed the watercourse.—*Bunting v. Hicks*, 70 L.T. 455.

Sale of Goods:—

- (iv.) **C. A.**—*Hire-Purchase—Contract—Pledge—Factors Act, 1889, ss. 2, 9.*—A. had hired a piano under a hire-purchase agreement from the plaintiff. Before all the instalments had been paid A. pledged the piano with the defendant, who had no notice of the plaintiff's rights. *Held*, that the agreement was an agreement to buy the piano under sect. 9 of the Factors Act, and that the section afforded a defence against an action by the plaintiff to recover possession upon default in payment of a subsequent instalment.—*Helby v. Matthews*, 42 W.R. 514.

Settled Estate:—

- (v.) **Ch. D.**—*Possession—Rights of Tenant for Life—Protection of Trustees—Mortgagee—New Trustee—Donee of Power Appointing himself.*—An equitable tenant for life is entitled to be let into possession on a proper case being made; but the order made for the purpose must protect the trustees, especially if the property is subject, as in leaseholds, to onerous covenants. The application may be made by originating summons, which must be served upon the trustees, and upon the mortgagee, if any, of the interest of the tenant for life, but not, in ordinary cases, upon the reversioner. The mortgagee may insist on the title deeds being left in the possession of the trustees. A female equitable tenant for life is not necessarily disabled from being let into possession. The donee of a power of appointing new trustees cannot appoint himself either solely or jointly with other trustees.—*Newen v. Barnes*, L.R. [1894] 2 Ch. 297; 70 L.T. 653.

Settled Land:—

- (vi.) **Ch. D.**—*Sale of Land—Costs—Settled Land Act, 1882.*—On a sale by several persons who together constitute the person entitled to exercise the powers of a tenant for life, one set of costs only is payable out of the proceeds of sale.—*Smith v. Lancaster*, 42 W.R. 559.

Ship:—

- (vii.) **C. A.**—*Bill of Lading—Loss by Perils of the Sea—Negligence—Burden of Proof.*—Where a bill of lading contains the customary exception of loss by perils of the sea, and the shipper sues the shipowner for damage to the goods, the burden of proving that the damage was caused by the negligence of the defendant's servants will rest on the plaintiff.—*The Glendarroch*, 68 L.J. P. 89; 70 L.T. 344.

- (i.) **P. D.—Charter-party—Construction—Signature to Bills of Lading—Penalty.**—A charter-party provided that the captain should sign bills of lading within twenty-four hours after the cargo was on board, and that 4d. per ton per day should be paid for delay. The captain refused to sign for seventeen days, but the owners offered to sign on his behalf within twenty-four hours. *Held*, that the signature of the owners did not satisfy the charter-party. *Held*, also, that the clause was for a penalty, and not for liquidated damages.—*The Princess*, 70 L.T. 388.
- (ii.) **C. A.—Charter-party—Default in Loading Full Cargo—Damages.**—The defendants chartered the plaintiffs' ship for carriage of a full cargo at £1 17s. 6d. per ton. The charter-party provided that the captain should sign bills of lading at any rate of freight provided that the aggregate bill of lading freight should not fall below the charter-party freight (£5,600). The defendants shipped some cargo at £1 5s. per ton. Part of this was destroyed by a fire, in consequence of which the sailing of the ship was delayed. The defendants refused to ship any more goods, and the plaintiffs loaded the ship with goods at various freights. The plaintiffs sued for breach of the charter-party. *Held*, that the space occupied by the goods destroyed by fire was taken out of the charter-party, that the defendants were not bound to pay freight for such space, nor entitled to fill it, and that the freight earned by the plaintiffs by filling such space was not to be taken in reduction of damages. *Held*, also, that the fire only absolved the defendants from paying the freight which would have been payable on the goods destroyed, so that the amount to be deducted from the chartered freight was £1 5s. per ton, not £1 17s. 6d. per ton on such goods.—*Atiken, Lilburn & Co. v. Ernsthause & Co.*, L.R. [1894] 1 Q.B. 773.
- (iii.) **H. L.—Collision.**—The T. and the O. were approaching each other on opposite courses in a narrow channel. In a manoeuvre by the T. to pass another ship the T. and the O. became nearly and on. When about a mile apart the T. signalled that she was going to starboard, and at the same time ported her helm. The O. heard the signal but kept her course. When the ships were within half-a-mile the T. repeated her signal, and ported her helm again. The O. starboarded and ran across the bows of the T. The T. stopped and reversed, but ran into and sank the O. The owners of the O. admitted that she was in fault, but alleged that the T. ought to have stopped sooner. *Held*, that the T. was not to blame.—*Wilson, Sons & Co. v. Currie*, L.R. [1894] A.C. 116.
- (iv.) **C. A.—Collision—Fog—Indications of Risk of Collision.**—A steamship in a fog hearing the whistle of an approaching ship is not absolutely bound to stop and reverse if the indications are such as to convey that there is no risk of collision, but the burden of proof lies on the steamship to shew that the indications were of that nature. When the captain of a steamship in such a case made a greatly mistaken estimate of the distance of the approaching ship, *held*, that the burden of proof had not been sustained.—*The Knarwarter*, 68 L.J. P. 65.
- (v.) **H. L.—Injury to Crew—Common Employment—Merchant Shipping Act, 1876, s. 5.**—Decision of C. A. (see Vol. 17, p. 66, i.) affirmed.—*Hedley v. Pinkney & Sons Steamship Co.*, L.R. [1894] A.C. 222; 68 L.J. Q.B. 419; 70 L.T. 680; 42 W.R. 497.
- (vi.) **H. L.—Insurance—Mutual—Articles imported into Policy—Addition to Articles not regularly passed by Company.**—A policy issued by a mutual assurance association provided that "the provisions contained in the articles of association shall be deemed and considered part of this policy." Previously to the date of the policy the association had

resolved to alter one of its articles by providing that it should be a condition of insurance that the assured should keep one-fifth of the value of the ship uninsured. This alteration was never confirmed by special resolution, but was printed on the back of the association's policies. The pursuer, who had insured with the association, also insured with another company, and so failed to keep one-fifth uninsured. *Held*, that the condition formed part of the policy and was binding upon the pursuer, in spite of the irregularity of the procedure by which the article had been altered.—*Muirhead v. Forth & North Sea Steamboat Mutual Insurance Association*, L.R. [1894] A.C. 72.

- (i.) **P. D.**—*Managing Owner—Repairs—Authority to Order*.—The managing owner or ship's husband has authority to order the necessary repairs and outfit for the ship, and his authority is not limited by the fact that she is insured. *Semble*, that the persons who do the repairs do not discharge their claims against the co-owners by reason of the fact that, failing to get cash, they have taken and renewed bills on account of such repairs.—*The Huntsman*, L.R. [1894] P. 214; 70 L.T. 386.
- (ii.) **P. D.**—*Negligence—Damage—Natural Consequence*.—A ship, while getting up anchor in a gale, negligently failed to obtain the aid of a tug. She was consequently driven against a pier, and ultimately accepted the assistance of the tug. It was then only possible to tow her one direction, and the towing hawser parted, and the ship went ashore damaging the plaintiff's property. The Court was advised that the parting of the tow rope was a thing which would "very probably" happen, considering the direction in which the ship had to be towed. *Held*, that the damage was the natural and probable consequence of the original negligence, and that the ship was liable.—*The Gertor*, 70 L.T. 703.
- (iii.) **H. L.**—*Salvage—Expenditure for Common Benefit*.—A ship with a cargo of valuable and perishable goods was stranded on the French coast. The owners incurred expenditure in removing the cargo, drying it, and carting it to a port for shipping. They employed skilled persons, and a French agent. Some of the cargo, which could not be identified, was sold, and a brokerage was paid. The owners sued the consignees of cargo for general average, particular average, salvage, and other charges. *Held*, that the expenditure, though extraordinary, was reasonably incurred for the benefit of all parties, and that the consignees were liable for their share of the expenses.—*Rose v. Bank of Australasia*, 70 L.T. 422.

Solicitor:—

- (iv.) **C. A.**—*Costs—Taxation—Disbursements while Unqualified—Attorneys and Solicitors Act, 1874, s. 12*.—A solicitor conducting a litigation delivered briefs to counsel during a period when he was not duly qualified, not having taken out a certificate, and the trial took place during that period. After he had taken out his certificate he paid fees in respect of the briefs and refreshers. *Held*, that such fees and refreshers ought not to be allowed against his client on taxation, being "disbursements on account of or in relation to an act or proceeding done or taken" while the solicitor was not duly qualified.—*Kent v. Ward*, 70 L.T. 612.
- (v.) **Ch. D.**—*Costs—Taxation—Costs of Relieving Property from Charges—Retainer—Solicitors' Remuneration Act, 1881*.—A taxing-master allowed the costs of relieving a property sold from charges, in addition to the scale fee, and found that an agreement as to costs was "fair and reasonable" on that footing. *Held*, that the finding was reasonable.

Where an order to tax ten bills is obtained, the retainer as to each bill is admitted.—*E. p. Perrett; in re Frappe*, L.R. [1894] 2 Ch. 290; 42 W.R. 475.

- (i.) **C. A. & Q. B. D.**—*Lien—Assignment of Judgment Debt—Priority—Solicitors Act, 1860, s. 28.*—A plaintiff compromised an action on terms as to certain payments by instalments, judgment being given for him. He then assigned for valuable consideration the money payable to him to a person who had been a witness in the action. The plaintiff's solicitor claimed a charging order for his costs. It was not proved that the assignee knew of the solicitor's claim. *Held*, that, as the assignee was aware of the action, he was not a "purchaser without notice," and that the solicitor was entitled to a charging order.—*Cole v. Eley*, L.R. [1894] 2 Q.B. 180 & 350; 42 W.R. 505.
- (ii.) **Ch. D.**—*Lien—Costs of Firm—Deeds held personally.*—A., a solicitor in partnership with another solicitor, acted for the purchaser of property, which, at the request of the purchaser, was conveyed to A., as if he were the sub-purchaser. The title deeds were handed to A. The partnership between A. and his partner was dissolved, but A. retained the deeds. The client died within six years of the purchase. In an action for the administration of his estate A. claimed for the old firm and for himself a considerable sum for costs, some of which were incurred before the purchase. The chief clerk disallowed such costs as were incurred more than six years before the client's death. A. claimed a lien on the deeds for the costs so disallowed. *Held*, that he was not entitled to such lien, as the costs of the purchase of the property had been allowed, and A. could not claim a lien on deeds handed to and retained by him personally for the general costs of the old firm.—*Lloyd v. Gough*, 70 L.T. 725.
- (iii.) **C. A.**—*Taxation of Costs—Illegal Employment.*—Money was subscribed by strangers and entrusted to J. to maintain litigation for the recovery of property. J. retained a solicitor, and paid him large sums. The litigation failed, and J. claimed taxation of the solicitor's bill of costs. *Held*, that the solicitor could not resist taxation or accounting for the money paid to him, on the ground that the employment for which he was retained, and for which the money was paid, was illegal.—*Jaques v. Thomas*, L.R. [1894] 1 Q.B. 747; 70 L.T. 567.
- (iv.) **C. A.**—*Taxation—Separate Retainers.*—Where several plaintiffs separately retain the same solicitor, each is entitled to a taxation of the whole bill without serving anyone except the solicitor, although, on an application to tax by any of the parties, the Court should endeavour, so far as practicable, to have all parties served.—*In re Salaman*, L.R. [1894] 2 Ch. 201; 42 W.R. 530.
- (v.) **C. A.**—*Retainer—Right of Solicitor to Terminate.*—Where a solicitor is retained to conduct an ordinary common law action, he cannot, before the conclusion of the action refuse to continue to act for his client and sue for his costs, except for some reasonable cause and upon reasonable notice.—*Underwood v. Lewis*, L.R. [1894] 2 Q.B. 306; 42 W.R. 517.
- (vi.) **Q. B. D.**—*Misconduct—Non-Payment of Counsel's Fees.*—Where the Incorporated Law Society have reported to the Court that a solicitor has received from his client payment of a bill of costs, including counsel's fees, and has improperly kept back the fees, the Court will take cognisance of the report, and will make such order as the circumstances of the case require.—*In re A Solicitor*, 63 L.J. Q.B. 397.

Tenant for Life:—

- (i.) **Ch. D.—Remainderman—Investments—Risky Securities—Conversion Duty of Trustees.**—A testator gave his residue to trustees upon trust to allow his wife to take the income for life, and after her death upon trust for his nephew. There was no trust for conversion and no investment clause. Part of the estate consisted of gas stock. *Held*, that a tenant for life could not take the income of property which was of a wasting or perishable nature; that in order to give the wife the income of the property as it stood there must be something equivalent to a specific gift; that there was no such gift in the will, and that the trustees should be required not to convert the gas stock and invest the proceeds in consols, but to set a value thereon, and pay the tenant for life 4 per cent. on such value.—*Daines v. Eaton*, 70 L.T. 761.

Tithe:—

- (ii.) **Q. B. D.—Remission—Certificate—Assessment—Inland Revenue Act, 1877, s. 18—Tithe Act, 1891, s. 8, sub-ss. 1, 4, 5.**—An owner-occupier of land exercised the option of being assessed for income tax under schedule D. He applied under the Tithe Act for a certificate from the commissioners of the annual value of his land. They declined to give one unless he first consented to have his land assessed under schedule B. *Held*, that they were right.—*Reg. v. Tax Commissioners for Petersfield*, 63 L.J. Q.B. 357.

Trade Mark:—

- (iii.) **Ch. D.—Added Matter—Disclaimer—Name of Applicant—Patents, &c., Acts, 1883, ss. 62, 64, 117; 1888, s. 10, sub-ss. 2, 3 (1).**—To come within the proviso which exempts a person from disclaiming the exclusive right to use his own name as part of the matter added to the essential parts of a trade mark, it is not necessary that in the case of an individual his whole name should be put on the mark, nor in the case of a firm that the whole name of the firm or of each partner should be put thereon. It is enough that part of the name only should appear, so long as it is used fairly and *bonâ fide* in such a way that it cannot be mistaken for anything else than the name of the person or persons who own the mark.—*In re Colman's Trade Mark* L.R. [1894] 2 Ch. 115; 63 L.J. Ch. 403; 70 L.T. 398; 42 W.R. 555.
- (iv.) **P. C.—Laches—User.**—The appellants, in 1889, registered in New South Wales the word "Maizena," which they had invented in 1856, and registered and enforced in other countries as a trade mark, but had always allowed to be used in the colony as descriptive of the article, and not of their own manufacture thereof. *Held*, that the word had become *publici juris*. The respondents had applied the word to their own goods, but did not pass them off as those of the appellants, but stated the name of the maker, and place of manufacture, and other particulars. *Held*, that they could not be restrained from such user.—*National Starch Manufacturing Co. v. Munn's Patent Maizena and Starch Co.*, L.R. [1894] A.C. 275.
- (v.) **Ch. D.—Registration—Essential Particular—Disclaimer—Patents, &c., Acts, 1883 to 1888.**—A company moved for the registration of a mark, consisting of a red label with two shields in the top corners, and a shield bearing St. George and the Dragon, also a large H. & Co., and words describing the article, and the name of the company, "Successors to Holbrook & Co." *Held*, that the whole of this complex label could not be considered an "essential particular" within sect. 64, sub-sect. 1 (c) of the Act of 1888, and that the applicants ought to disclaim Holbrook & Co.—*In re Birmingham Vinegar Brewery Company's Trade Mark*, 70 L.T. 646.

Tramway:—

- (i.) **C. A.—Compulsory Purchase—Basis of Valuation—London Street Tramways Act, 1870, s. 44.**—*Held*, that the value of the undertaking was to be considered as being the cost of construction, less depreciation. Decision of Q. B. D. (see Vol. 19, p. 107, i.) reversed.—*In re London County Council v. London Street Tramways Co.*, L.R. [1894] 2 Q.B. 189; 63 L.J. Q.B. 438; 70 L.T. 572.
- (ii.) **Ch. D.—Sale of Undertaking—Debenture-holders—Tramways Act, 1870, ss. 42, 44.**—*Held*, that the Court had power at the instance of debenture-holders to sell the undertaking of a tramway company as a going concern. Leave was given to the receiver and manager to spend a sum of cash in his hands in the repair of old and the purchase of new rolling stock, in order to enable the undertaking to be sold favourably.—*Bartlett v. West Metropolitan Tramways Co.*, L.R. [1894] 2 Ch. 286; 63 L.J. Ch. 519; 70 L.T. 491; 42 W.R. 500.

Trespass:—

- (iii.) **Q. B. D.—Injury to Cattle—Poisonous Tree.**—The plaintiff's horse died in consequence of eating some yew which grew entirely within the defendant's boundary. There was no evidence of any obligation on the defendant to fence against the plaintiff's cattle, or that the yew tree constituted a trap or a nuisance. *Held*, that the test was whether the horse had any right to be where he was when he received the injury; that the possession by the defendant of something attractive to cattle did not make it his duty to take precautions against trespass in pursuit of it by his neighbour's cattle, unless it was in the nature of a trap; and that the defendant was not liable.—*Ponting v. Noakes*, L.R. [1894] 2 Q.B. 281; 42 W.R. 506.

Trustee:—

- (iv.) **Ch. D.—Breach of Trust—Instigated by Tenant for Life—Equity in Remainderman—Trustee Act, 1893, s. 45.**—The trustees of a marriage settlement, at the instigation of the tenants for life, sold certain stock part of the trust estate, and advanced the proceeds to the husband on an equitable mortgage of Irish land, thereby committing a breach of trust. The husband had settled a sum secured by a mortgage of the same land. The husband by deed assigned his life interest under the settlement in the said mortgage debt to X. There was a remainderman under the settlement in existence. *Held*, that at the date of the assignment there was an equity in the remainderman, which vested in the trustees on their replacing the stock sold, and that apart from special circumstances, which had not been shewn, such equity took priority over the interest of X.—*Bolton v. Currie*, 70 L.T. 759.
- See Vendor and Purchaser*, p. 145, v.

Vendor and Purchaser:—

- (v.) **C. A.—Conveyance of Land—Adjoining Road—Soil of Roadway—Presumption of Law—Rebuttal.**—Decision of Ch. D. (see Vol. 19, p. 108, ii.) affirmed.—*Pryor v. Petre*, L.R. [1894] 2 Ch. 11; 70 L.T. 331; 42 W.R. 435.
- (vi.) **Ch. D.—Contract—Letters.**—A. made a written offer to purchase B.'s property for £1,450. B.'s solicitors wrote accepting the offer, and continued "we enclose contract for your signature. On receipt of this signed by you across the stamp and deposit we will send you copy signed by him." The enclosed contract contained the usual conditions of sale and provided for a deposit, and limited the length of title to

be shewn. A. did not sign the contract. *Held*, that the letters did not constitute a contract.—*Jones v. Daniel*, L.R. [1894] 2 Ch. 882; 70 L.T. 588.

- (i.) **C. A.**—*Delay in Completion—Wilful Default of Vendor—Interest.*—A contract provided for payment of interest on the purchase-money if the completion should be deferred beyond the 24th June from any cause other than the "wilful default" of the vendors. The particulars stated that the property had been acquired, and was being sold, under a private Act. On the 16th June the purchaser found by inspecting the plans, to which he had been referred on the 12th May, that part of the property was not included in the Act. An abstract of such part was sent, and the title was accepted on the 30th September, and the purchase completed on the 18th February next. *Held*, that under the circumstances the omission of the vendors to verify the statement as to title contained in the particulars was not "wilful delay." *Held*, also, that the real cause of delay was that the purchaser was not ready with his money. *Held*, that interest must be paid for the whole time from the 24th June till the completion of the purchase.—*In re Tubbs and The Mayor, &c., of London*, 70 L.T. 719.
- (ii.) **H. L.**—*Misrepresentation—Rescission.*—A. contracted to sell a brewery to B. for £20,500, the contract stating that the basis of the arrangement was that the average profits for two years had amounted to a named sum, and that the contract was to be at an end if the profits turned out to be less. An examination of the books made it appear that the profits were about the named sum. B. contracted to sell all his rights under the contract to the C. Co., for £28,500. The brewery was conveyed to the company, and it afterwards turned out that the books had been improperly kept by a clerk, without the knowledge of A., and that the profits had not in fact been so great as they appeared to be. The company attempted to get the sale set aside, acting with the concurrence of B. *Held*, that neither of the plaintiffs could succeed; as B. had no interest in the subject-matter, and the conveyance to the company not embodying nor intending to embody the stipulations of the contract with B. the company had no right against A.—*Edinburgh United Breweries v. Malleson*, L.R. [1894] A.C. 96.
- (iii.) **C. A.**—*Municipal Corporation—Building Scheme—Restrictive Covenants*—*Municipal Corporations Act*, 1882, s. 109.—Decision of Ch. D. (*see* Vol. 19, p. 108, iv.) affirmed.—*Davis v. Corporation of Leicester*, L.R. [1894] 2 Ch. 208; 63 L.J. Ch. 440; 70 L.T. 599.
- (iv.) **Ch. D.**—*Specific Performance—Contract—Signature by Auctioneer.*—In a sale by auction, the auctioneer is the agent, not only of the vendor, but also of the purchaser, to the extent that he is entitled, if authorized to do so by the purchaser, to sign in his name and on his behalf a memorandum of the particulars of the contract sufficient to satisfy the Statute of Frauds.—*Sims v. Landray*, L.R. [1894] 2 Ch. 318; 70 L.T. 530.
- (v.) **Ch. D.**—*Trustee convicted of Felony—Transfer of Mortgage—Felony Act*, 1870.—A trustee can transfer a mortgage, part of the trust property, even after a conviction for felony, without the concurrence of the administrator appointed under the Act.—*In re Levy and the Debenture Corporation*.

Waterworks:—

- (vi.) **Q. B. D.**—*Rate—House Occupied for part of Quarter—Waterworks Clauses Act*, 1847, ss. 70, 71.—Where a house is unoccupied at the beginning of a quarter, and becomes occupied during the quarter, the

water company are entitled only to a part of the rate proportional to the period of occupation, although they had no notice that it was unoccupied, and consequently continued the supply of water.—*East London Waterworks v. Foulkes*, L.R. [1894] 1 Q.B. 819.

- (i.) **Ch. D.**—*Water Company*—"Able and Willing" to Supply Water—*Loca Board*—*Public Health Act*, 1875, ss. 51, 52, 179, 180.—Under the plaintiffs' special Act the defendants were forbidden to construct waterworks within the plaintiffs' limits for four years so long as the plaintiffs were able and willing to supply water proper and sufficient. The plaintiffs made some unsuccessful attempts to find water, and within two years of the special Act the defendants gave them notice that they would construct waterworks unless informed within a month of the plaintiffs' ableness and willingness. The matter was referred to arbitration, and the company becoming aware that the board were forwarding a scheme for waterworks, moved for an injunction to restrain them from threatening or commencing to construct works, and from proceeding to arbitration. The arbitrators found that the company were "able and willing," and that their supply was proper and sufficient. *Held*, that the defendants must pay the costs of the action, setting off any costs incurred by them by reason of the plaintiffs seeking an injunction to restrain the arbitration.—*The Bognor Water Co. v. The Bognor Local Board*, 70 L.T. 402.

Will:—

- (ii.) **C. A.**—*Construction*—*Accumulations*—*Thelusson Act*.—Decision of Ch. D. (see Vol. 19, p. 109, ii.) affirmed.—*Harbin v. Masterman*, L.R. [1894] 2 Ch. 184; 63 L.J. Ch. 388; 70 L.T. 357.
- (iii.) **Ch. D.**—*Construction*—*Gift of Income to Wife for Maintenance of Children*—*Rights of Adult Children*.—Testator gave his residue in trust to pay the income to his wife for her life "for her use and benefit and for the maintenance and education of my children." The capital was given to the children at her death. *Held*, that the wife took the income subject to a trust for the maintenance and education of the children, and that the trust was not limited to children under twenty-one or unmarried. All the children having attained twenty-one, and the widow having become bankrupt, an inquiry was ordered, upon summonses by married and unmarried daughters, whether any, and if any, which of the children required maintenance.—*Booth v. Booth*, L.R. [1894] 2 Ch. 282.
- (iv.) **Ch. D.**—*Construction*—*Lapse*—*Gift to Named Persons*—*Settlement*.—Gift of real and personal estate upon trust for conversion, the proceeds to be held on trust for A., B., C., and D. in equal shares. Declaration that each of the shares should be held on trust for the legatee for life, and afterwards for her children, with further trusts over which exhausted the beneficial interest in the share. A. died before the testator, leaving children who survived the testator. *Held*, that the gift of A.'s share did not fail, and that her children were entitled.—*Moreton v. Hughes*, L.R. [1894] 2 Ch. 276; 42 W.R. 438.
- (v.) **C. A.**—*Construction*—*Niece*—*Illegitimacy*—*Extrinsic Evidence*.—Gift to testator's "niece E. W." Neither he nor his wife had any niece, but his wife had a legitimate grandniece and an illegitimate grandniece, both named E. W. *Held*, that the illegitimate grandniece could not come into competition with the legitimate, that there was no ambiguity, and that parol evidence could not be admitted.—*Ingham v. Raynor*, L.R. [1894] 2 Ch. 83; 63 L.J. Ch. 437; 42 W.R. 520.

- (i.) **Ch. D.—Remoteness.**—A testator left his freehold gravel-pits to trustees upon trust to work them till they were worked out, and then to sell them. He directed that the proceeds should be in trust for such of his children "then living," and such issue living of any children then deceased, as should attain twenty-one. The gravel-pits were entirely worked out within six years of the testator's death. *Held*, that both the direction to sell, and the trust of the proceeds were void for remoteness.—*Tullett v. Colville*, L.R. [1894] 2 Ch. 810.
- (ii.) **P. D.—Probate—Obliteration—"Apparent"**—*Wills' Act*, ss. 20, 21.—Words beneath obliterations, erasures, or alterations are "apparent," and will be inserted in the probate, if experts can decipher them with the aid of magnifying glasses, but it is not allowable to resort to any physical interference with the document to render the writing clearer. Slips of paper were pasted over words in a will. The words could be read by an expert in writing, by placing a piece of brown paper round them and holding them against a window. *Held*, that the words had been "obliterated," but that the words were "apparent."—*Finch v. Combe*, L.R. [1894] P. 191; 70 L.T. 695.

See Infant, p. 125, vi.

Ex. J. M.



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